

1 (Whereupon, end of in  
2 camera proceedings.)

3 CROSS-EXAMINATION

4 BY

5 MR. RIDDICK:

6 Q. Mr. Burdell, Conrad Riddick here, City of  
7 Chicago.

8 A. Hello, Mr. Riddick.

9 Q. I'd like to start by revisiting some topics  
10 that I spoke with Mr. McDonald about. One of the  
11 questions I ask Mr. McDonald concerned the  
12 possibility of a refund obligation with respect to  
13 decommissioning costs.

14 And in that connection, I asked him  
15 whether the agreements attached to the notice  
16 addressed this issue in any way, and he did not  
17 know.

18 Do you know whether the agreements  
19 attached to the notice address this issue?

20 A. Yes.

21 MR. FLYNN: Well, I have a couple objections.  
22 One, to the extent that the witness is being asked

1 to provide a legal opinion; and, secondly, with  
2 respect to the specific characterization of  
3 Mr. McDonald's testimony. He said what he said and  
4 the transcript will show that.

5 But with that, if the witness offers his  
6 understanding and it's our understanding that he's  
7 not offering a legal opinion, then I don't have a  
8 problem.

9 JUDGE ZABAN: Okay. Mr. Burdell, are you a  
10 lawyer?

11 THE WITNESS: Could I ask Mr. Flynn to speak up.  
12 I really can't hear what he's saying.

13 MR. FLYNN: I objected on the grounds -- to the  
14 extent that it called for a legal opinion, Bob. And  
15 then Examiner Zaban asked if you were a lawyer.

16 THE WITNESS: Am I a lawyer? No, I am not.

17 JUDGE ZABAN: Okay. And you're not here at any  
18 time with any of your testimony to render any legal  
19 opinions; is that correct?

20 THE WITNESS: No I am not.

21 JUDGE ZABAN: Okay.

22 MR. FLYNN: Give me one second.

1 JUDGE SHOWTIS: If you recall the question, you  
2 can answer. And it's obvious that you're not  
3 stating a legal --

4 THE WITNESS: The question was whether I knew  
5 whether the contribution agreement had -- or covered  
6 a refund in the decommissioning portion of the  
7 contribution agreement, and the answer is, yes, I  
8 know.

9 BY MR. RIDDICK:

10 Q. Is there a provision of the agreements that  
11 addresses the possibility of a refund?

12 A. The agreement contemplates that  
13 decommissioning will be covered through -- the  
14 satisfaction of the decommissioning liability that  
15 Genco is assuming from ComEd will be satisfied  
16 through the transfer of the decommissioning trusts  
17 to the Genco and ComEd's continued ability to  
18 petition the Commission to recover any shortfalls in  
19 decommissioning that may arise from time to time.

20 As a result, the Commission will have the  
21 ability to address through the Rider 31 proceedings  
22 whether there exists a shortfall; or if the

1 shortfall doesn't exist, then that the Commission  
2 will have the ability to adjust cost to service at  
3 some future date.

4 JUDGE ZABAN: I have a quick question on that  
5 subject.

6 EXAMINATION

7 BY

8 JUDGE ZABAN:

9 Q. How does Commonwealth Edison propose to get  
10 monies back from Genco if it turns out there's  
11 excess in the decommissioning?

12 A. Well, it's really not contemplated that  
13 there will be excesses because currently there is  
14 about \$2 1/2 billion in the decommissioning trusts,  
15 and the current decommissioning liability is roughly  
16 5.6 billion; so there is roughly a \$3 billion  
17 shortfall in adequate funding of decommissioning.

18 The -- so the what is being contemplated  
19 is that ComEd would continue to collect  
20 decommissioning costs from ratepayers and then remit  
21 those collections over to the Genco.

22 Q. And if ComEd is unable to collect those

1 decommissionings by any action of the Commission,  
2 will that result in an increase in rates that --  
3 which ComEd will have to buy electricity in order to  
4 make up that shortfall?

5 A. Who is speaking?

6 Q. My name is Sherwin Zaban. I'm one of the  
7 hearing examiners.

8 A. Oh, okay. Could you break that question  
9 down for me?

10 Q. Okay. Assuming and based on your assumption  
11 that there is a current shortfall of about  
12 \$3 billion and that the -- that Genco is going to --  
13 or anticipates that ComEd will continue or be able  
14 to continue to collect decommissioning costs via  
15 Commission approval, if, in any event, the  
16 Commission either severely limits ComEd's ability to  
17 collect decommissioning costs or terminates ComEd's  
18 ability to collect decommissioning cost, will that  
19 result in an increase in the cost of electricity if  
20 ComEd has to buy from Genco in order to make up that  
21 shortfall?

22 A. Well, I think before we even begin to talk

1 about the price of electricity, I think the company  
2 would evaluate in that scenario whether it was  
3 economically beneficial to even create the Genco,  
4 number one.

5           However, assuming that the company were  
6 to determine that the Genco was still economically  
7 advisable and created it, the agreements that the  
8 Commission has before it to approve state that the  
9 price of power through 2004 that ComEd would be  
10 paying to the Genco is fixed at a certain rate, of  
11 which I won't name because it's -- I think it's  
12 confidential.

13           Then in the years 2005 and 2006, the  
14 price of energy from the nuclear plants is not  
15 currently fixed but will be negotiated based upon  
16 then current market prices, which likely will not be  
17 influenced by the shortfall in the decommissioning  
18 trusts. So I would say my long answer to your  
19 question is, no.

20       JUDGE ZABAN: Okay.

21       MR. RIDDICK: Thank you.

22

1 CONTINUED CROSS -EXAMINATION

2 BY

3 MR. RIDDICK:

4 Q. Mr. Burdell, could you describe -- this,  
5 again, is a question that Mr. McDonald referred to  
6 you.

7 Could you describe the mechanics of the  
8 process that Edison will use to transfer the trust  
9 fund assets to Genco?

10 A. The mechanics of the process are such that  
11 we will terminate the trusts that currently exist,  
12 and the investments in those trusts will be  
13 transferred to newly created trusts that will be  
14 created on behalf of the receipt of those  
15 investments by the Genco.

16 Q. And what is the nature of that transfer?

17 A. What do you mean what's the nature of it?

18 Q. How would you characterize the transfer of  
19 assets from the terminated trust to the Genco trust?  
20 I mean is that --

21 A. It's part of the overall transaction of  
22 moving the plants from ComEd -- the plants and the

1 power purchase agreements from ComEd to the Genco.

2 Q. And is this consideration paid by UniCom or  
3 by Genco?

4 A. The --

5 MR. FLYNN: I'm going to object to the question  
6 and to the use of the term "consideration."

7 What counsel is asking the witness about  
8 is a transfer of assets, and I don't know that we've  
9 established what is meant by "consideration" in this  
10 context, and I'm afraid the witness may get  
11 confused; and then the record, as a result, will be  
12 a mess.

13 JUDGE ZABAN: Actually, assumes a fact not in  
14 evidence. But this is part of the consideration.

15 BY MR. RIDDICK:

16 Q. Mr. Burdell, is there consideration involved  
17 of this transaction?

18 A. There is consideration and the consideration  
19 is that ComEd would receive stock in the Genco.

20 Q. And that is consideration paid by Genco?

21 A. Yes.

22 Q. And in return for the consideration paid by



1 Genco, is one of the things Genco acquires these  
2 trust fund assets?

3 A. Trust fund assets and the liability to  
4 decommission the plants.

5 EXAMINATION

6 BY

7 JUDGE ZABAN:

8 Q. Will ComEd receive stock in value from Genco  
9 commensurate with the amount of money they transfer  
10 in the trust funds?

11 A. The value of the shares that ComEd will  
12 receive in this transaction represent the fair value  
13 of all of the assets transferred to the Genco.

14 So there are some assets but there are  
15 also some obligations or liabilities assumed by the  
16 Genco, and so the stock will be valued at the net  
17 value of all of the assets and liabilities assumed.

18 Q. Okay. I think my question, Mr. Burdell, is  
19 that, is the contents or -- of the trust fund going  
20 to be considered an asset by Genco?

21 A. Yes.

22 Could I try to answer your question

1 another way?

2 Q. Sure.

3 A. More directly.

4 The decommissioning portion of the value  
5 in this transfer, the Genco will assume obligations  
6 to decommission the plants. So that's a liability.

7 But the Genco will also assume to things  
8 to satisfy that obligation. One is the assets and  
9 the trusts; and then, two, the second, is the right  
10 to continue to deposit monies into these trusts that  
11 it has been promised by ComEd so that Genco will  
12 view -- will record that as a receivable from ComEd.

13 So the combination of the value of the  
14 trust and the receivable from ComEd will equal the  
15 obligation to decommission the plants.

16 Did that answer your question?

17 JUDGE ZABAN: That's fine.

18 Mr. Riddick?

19 MR. RIDDICK: Thank you.

20

21 CONTINUED CROSS -EXAMINATION

22 BY

1 MR. RIDDICK:

2 Q. Has Edison requested any order from the ICC  
3 specifically authorizing the transfer of the trust  
4 fund assets?

5 A. I don't know the answer to that question.

6 Q. You're not looking for that sort of  
7 authorization in this proceeding though?

8 MR. FLYNN: Same objection regarding  
9 Mr. Burdell's legal acumen, competence.

10 Nothing personal, Bob.

11 JUDGE ZABAN: Okay. The objection is overruled  
12 on that. There is a petition and you're not seeking  
13 at this time, Mr. Flynn, to amend the petition in  
14 any way other than what -- as it appears on its  
15 face, is that correct, in its pleadings?

16 MR. FLYNN: Yeah. My only concern -- Mr. Burdell  
17 is free to give his understanding.

18 JUDGE ZABAN: Right. That's fine.

19 MR. FLYNN: As long as it's not interpreted as  
20 the company's legal opinion.

21 JUDGE ZABAN: No. The pleadings speak for  
22 themselves. I mean, obviously that's -- but I want

1 to make sure that we -- what we're dealing with is  
2 the pleadings that are before this and that we're  
3 not going to finish everything and then have an  
4 amendment to include something else. And I think in  
5 that respect it's a proper question.

6 BY MR. RIDDICK:

7 Q. Do you recall the question, Mr. Burdell?

8 A. I thought I answered the question.

9 MR. FLYNN: I may have spoken over you.

10 MR. RIDDICK: I'm sorry, could you -- if we need  
11 to go over, we can do that because when Mr. Flynn  
12 objected I stopped listening to and listened to him.

13 MR. FLYNN: That's very kind but I don't recall  
14 hearing --

15 JUDGE ZABAN: Just give an answer. Ask a  
16 question, give an answer.

17 BY MR. RIDDICK:

18 Q. The question, to repeat, was whether Edison  
19 had requested an order from the ICC specifically  
20 authorizing the transfer of the trust fund assets?  
21 And understanding this is not a legal opinion.

22 A. I believe it's a part of this request to

1 create the Genco.

2           If you're asking is there a separate  
3 petition requesting to transfer the decommissioning  
4 trusts, I don't believe there is. I think -- I  
5 believe it's a part of this request.

6       Q. Let me flip back to the question I asked,  
7 Mr. McDonald. And that is -- this is a part of a  
8 series of questions I've asked of both you and  
9 Mr. McDonald trying to clarify precisely what the  
10 relief is that Edison is seeking in this case.

11           And to the extend that you can, could you  
12 describe to me the precise relief Edison is looking  
13 for in this proceeding?

14       A. What is the request of the company in this  
15 proceeding?

16       Q. What is the company looking to obtain from  
17 the Commission is one way I would ask the question.

18       A. I believe we -- the company is looking to  
19 have the Commission approve the transfer of certain  
20 assets, contracts and obligations to a newly created  
21 Genco company under Exelon.

22           And the company has shown, in my

1 judgment, that it has met the two tests required  
2 under the statute, financial viability is -- will be  
3 maintained through 2004. And this transfer will not  
4 increase the likelihood that the company would  
5 request a change in its frozen base rates.

6 Q. I'm striving for clarity here, so I don't  
7 want to confuse the record. Let me give you a  
8 statement of what I believe Mr. McDonald said and  
9 see if you agree with it and, of course --

10 A. Okay.

11 Q. -- you should wait because Mr. Flynn may  
12 object to my characterization of the testimony.

13 Mr. McDonald said that Edison was looking  
14 for findings by this Commission that the two  
15 statutory conditions; that is, no likelihood of a  
16 rate increase during the mandatory period and no  
17 degradation of the service Edison is able to  
18 provide, are not supported by the evidence in this  
19 case, and that's all they were looking for.

20 Mr. Flynn?

21 MR. FLYNN: All right. This -- the fact that  
22 Mr. Burdell is not a lawyer and can muse as to what

1 the statute means is not -- does not save this  
2 entire line of inquiry.

3           Mr. Riddick is attempting to clarify  
4 really what 16-111(g) means and requires, which  
5 while an admirable pursuit, is not one that I think  
6 is enhanced by asking lay witnesses what they  
7 think -- in essence, what the statute requires of  
8 them in this instance.

9           That's Mr. Riddick's job and my job to  
10 present to this Commission to the extent that there  
11 is specific facts that may be elicited in the  
12 proceeding that are useful in that regard, then,  
13 fine. Let's elicit them.

14           What the witness thinks is required under  
15 16-111(g), what findings the Commission has to make,  
16 is not relevant to the job that Mr. Riddick and I  
17 have to complete.

18           So this inquiry is, in a word, pointless.  
19 It doesn't get us anywhere.

20       JUDGE ZABAN: I don't believe that's what he's  
21 asking. He's not asking him whether they're  
22 satisfied. He's asking -- what he's asking him is

1 what it is Commonwealth Edison is seeking from this  
2 Commission to clarify.

3           And I think we've gone over it with  
4 Mr. McDonald. I've indicated that it's my belief  
5 that the pleadings speak for themselves in terms of  
6 what you're asking for and that any order that the  
7 Commission drafts will be in terms of the pleadings.

8           And I think to that extent, I agree with  
9 Mr. Flynn that the only evidence being presented  
10 here is inconsistent -- is that evidence that's --  
11 or what they believe to be as consistent with that  
12 aim. Okay?

13           So if Mr. Burdell believes that it's here  
14 to get something involving decommissioning and the  
15 pleadings don't substantiate that, it really doesn't  
16 make a lot of difference what Mr. Burdell believes.  
17 Okay?

18       JUDGE SHOWTIS: I agree with Mr. Zaban. I think  
19 it's a waste of time to ask this witness what he  
20 believes ComEd is seeking because ComEd is seeking  
21 what's set forth in their pleadings.

22           And I think -- hopefully that will be



1 clear at least in the initial briefs, if there are  
2 briefs in these proceedings, the relief that ComEd  
3 is seeking in this proceeding.

4           And he's not giving a legal opinion as to  
5 what's required under Section 16-111(g), so I'm  
6 going to preclude any further questions of this  
7 witness on that point.

8       JUDGE ZABAN: Mr. Riddick, is there a point to  
9 the question? I mean, if there's something --

10      MR. RIDDICK: Yes. Yes.

11      JUDGE ZABAN: Just ask him the question and  
12 let's -- okay? And...

13      MR. RIDDICK: If I may make a brief statement to  
14 clarify my position.

15      JUDGE SHOWTIS: And to make it clear also, there  
16 is decommissioning docket that's going to determine  
17 what obligations, if any, ratepayers will have with  
18 regard to further decommissioning of the plant,  
19 assuming the transfer were to take place.

20           This docket is not going -- is not the  
21 vehicle and is outside the scope of this docket for  
22 the Commission to reach conclusions with regard to

1 future liabilities of ratepayers with regard to  
2 decommissioning.

3               So whatever is done here, is not going to  
4 be -- provided any answer with regard to the  
5 decommissioning obligation which is going to be  
6 litigated, and I expect in contested context in that  
7 docket. I just don't have the docket number in mind  
8 at this time.

9       MR. RIDDICK: Well, let me assure the examiner  
10 that my question did not go to the decommissioning  
11 costs. My question had to do specifically with the  
12 contracts attached to the notice.

13               I'm not asking the witness to interpret  
14 what 111(g) requires. I am asking the witness to  
15 clarify what the notice proceeding that Edison has  
16 commenced seeks from the Commission. And in that  
17 respect, if Edison -- I mean, if Mr. Flynn is  
18 representing that all Edison is asking for is the  
19 minimum required by 111(g), my questions go away.

20               But I have heard testimony from  
21 Mr. Burdell, who refers to the agreements before the  
22 Commission for approval and in the prefiled

1 testimony of other Edison witnesses, some ambiguity  
2 on that point and --

3 JUDGE ZABAN: I think we all agree that the Genco  
4 doesn't exist, that there's a proposed agreement  
5 that when the Genco is created this is what the  
6 agreement is going to be with Genco, that based on  
7 that agreement, as it stands, the issues then  
8 become -- with that agreement in effect, will  
9 Commonwealth Edison be able to meet the two-prong  
10 test? And I think the questions have to be  
11 addressed to that end. Okay?

12 And this isn't -- this doesn't have to do  
13 with speculation in terms of what could or may  
14 happen. It's, We have an agreement.

15 Mr. McDonald testified -- and I asked  
16 specifically, do you understand coming here before  
17 this Commission you've given us an agreement for  
18 nonexistent company? That if we give you approval  
19 and say that you've met the requirements, it's based  
20 specifically on this agreement; that if you alter  
21 this agreement in any way, shape or form, in any  
22 material form, that the Commission's approval may be

1 withdrawn?

2                   And so to that end, you can ask him  
3 questions about the contract as they relate to  
4 reliability, but I don't think anything else is  
5 germane at this point.

6       MR. RIDDICK: And that is precisely the point I  
7 was trying to get to. Perhaps I did so  
8 excruciatingly inartfully.

9       JUDGE ZABAN: Rather than doing it  
10 circuitously --

11 BY MR. RIDDICK:

12       Q. Let me ask you directly, Mr. Burdell, is it  
13 true that Edison has attached these agreements to  
14 its notice simply to support its position on the  
15 statutory conditions and not to seek Commission  
16 approval of the substance of the contracts?

17       MR. FLYNN: Objection. This just calls into  
18 question what 16-111(g) does, and I Mr. Riddick  
19 doesn't believe that he thinks he's asking the  
20 witness -- or doesn't believe that he's asking the  
21 witness what 16-111(g) is.

22                   But as I explained earlier, 16-111(g) is

1 not a proceeding in which you come in and ask for  
2 approval of certain transactions. It is a statutory  
3 provision whereby you give the Commission notice of  
4 your intent to engage in certain transactions.

5           The company has filed a notice in which  
6 has identified transactions. It has, as required by  
7 the statute, supplied the relevant agreements  
8 relating to those transactions, and it provided  
9 explanations with respect to the -- it provided all  
10 the other information that was required under this  
11 section, as staff witness, Goldberger's testimony  
12 indicates. And it provided explanations as required  
13 under Part 6 as to why the two-prong test is  
14 satisfied.

15           The Commission's only authority at that  
16 point is to enter into an investigation of those two  
17 points. That does not mean that everything that the  
18 company has supplied is in relation to those two  
19 points. It doesn't mean that that's the only  
20 effect. It doesn't limit the transactions that --  
21 for which we've given notice of our intent to  
22 engage. It's not limiting at all.

1                   All it does is define two very narrow  
2 areas in which the Commission can investigate.  
3 We've provided that evidence, and we keep coming  
4 back to questions and questions and questions that  
5 are attempting to get the witness to interpret  
6 16-111(g), in effect, because that's really what  
7 he's being asked to do as to what the legal effect  
8 of the Commission's decision is here, as to what the  
9 Commission is approving and what is not.

10                   That is beyond the witness' ken, and it's  
11 inappropriate and simply wasteful of time to pursue  
12 it.

13                   I agree with the examiners. The  
14 pleadings are what they are. The statute is what it  
15 is. We've given notice of the transaction that's  
16 been described. What can the witness add?

17       THE WITNESS: Chris, could I ask for a 5-minute  
18 recess? I'm getting kicked off the phone that I'm  
19 calling in at, so I have to go to another phone.

20       MR. FLYNN: That's not in my discretion to grant  
21 that but I'll repeat your request to the examiner.

22       JUDGE ZABAN: Do you have much more, Mr. Riddick?

1       MR. RIDDICK: Not on this issue.

2       JUDGE ZABAN: Okay. On other issues, I take?

3               Anybody else have any further questions?

4               Okay. Then I think you need to call

5 back.

6                       (Whereupon, a brief

7                       recess was taken.)

8       JUDGE ZABAN: We're going to grant leave to call

9 a witness out of turn to allow Mr. Larson to

10 testify.

11       MR. REVETHIS: Yes, and staff very much

12 appreciates that, Mr. Examiner.

13               Off the record for just a moment.

14                       (Whereupon, a discussion

15                       was had off the record.)

16

17

18                       (Witness previously sworn.)

19               BRUCE A. LARSON,

20 having been called as a witness herein, after having

21 been first duly sworn, was examined and testified as

22 follows:

1 DIRECT EXAMINATION

2 BY

3 MR. REVETHIS:

4 Q. Sir, would you kindly state your name, title  
5 and business address for the record, if you would  
6 please.

7 A. My name is Bruce A. Larson. I'm a senior  
8 energy engineer at the Illinois Commerce Commission,  
9 527 East Capitol Avenue, Springfield, Illinois.

10 Q. And, sir, you have, in fact, prepared a  
11 document which is consisted of -- consisting of  
12 seven pages of narrative testimony and including one  
13 attachment, which is entitled the direct testimony  
14 of Bruce Larson in this docket, which has been  
15 previously marked for purposes of identification as  
16 ICC Staff Exhibit 3; is that correct, sir?

17 A. Yes.

18 Q. And this document and this narrative  
19 testimony and this attachment was prepared by or  
20 under your direction and control, sir?

21 A. Yes.

22 Q. And do you have any additions, modifications



1 or corrections you wish to make to either your  
2 narrative testimony or your attachment, sir?

3 A. No.

4 Q. Okay. And, sir, is it your intent that this  
5 be your sworn direct testimony in this proceeding?

6 A. It is my intent.

7 MR. REVETHIS: Mr. Examiner, at this time we ask  
8 that the direct testimony of Bruce Larson,  
9 previously marked as Illinois Commerce Commission  
10 Staff Exhibit 3, along with accompanying  
11 Attachment 1 be admitted into evidence at this time.  
12 And we offer the witness for cross-examination also  
13 at this time.

14 JUDGE ZABAN: Any objections?

15 Okay. What is previously Staff Exhibit  
16 No. 3 will be admitted into evidence.

17

18 (Whereupon, Staff  
19 Exhibit No. 3 was admitted  
20 into evidence.)

21 JUDGE SHOWTIS: Do the parties have any cross?

22 MR. ROBERTSON: Do I, Mr. Examiner.

1 MR. RIDDICK: I have one question.

2 MR. ROBERTSON: Go ahead.

3 CROSS-EXAMINATION

4 BY

5 MR. RIDDICK:

6 Q. Mr. Larson, Conrad Riddick for the City of  
7 Chicago.

8 In your review of -- or I should say in  
9 your evaluation of Edison's ability to provide  
10 service after the transfer of the plants, did you  
11 assume that the circumstances described in the  
12 attachments to the notice were, in fact, true; is  
13 that the basis of your analysis?

14 MR. REVETHIS: May I have that question repeated?

15 MR. RIDDICK: I can restate it.

16

17 BY MR. RIDDICK:

18 Q. Did you assume that everything would operate  
19 as described in the agreements attached to the  
20 notice for purposes of your evaluation?

21 A. I'm not sure that that was necessary to come  
22 to the conclusions I did. You'd have to be more

1 specific.

2 Q. Well, in your testimony you mentioned the  
3 purchase power agreements specifically.

4 Did you assume that the operation of the  
5 purchase power agreement was as described for  
6 purposes of determining whether Edison would be able  
7 to reliably provide service after the transaction?

8 A. Yes.

9 MR. RIDDICK: That's all. Thank you.

10 MS. DOSS: I have two questions.

11 CROSS-EXAMINATION

12 BY

13 MS. DOSS:

14 Q. Mr. Larson, this is Leijuana Doss on behalf  
15 of Cook County State's Attorneys Office.

16 Referring to Appendix K, do you have  
17 that?

18 MR. REVETHIS: Well, why don't you -- if you  
19 could, describe it.

20 BY MS. DOSS:

21 Q. Appendix K and ComEd's notice of transfer.

22 A. I do not have anything here in Michigan.

1 Q. Okay. Well, may be you can -- if you can --  
2 from your memory, if you can answer this question  
3 and if not then --

4 A. Is there a statement?

5 Q. Yes.

6 For the new and transferred generation  
7 with -- noted in Appendix K, do you know if that new  
8 or transferred generation is exclusively for the use  
9 in ComEd's territory?

10 A. Particularly, the new capacity is not  
11 exclusively for Commonwealth Edison's use. However,  
12 the way power flows works, if that electricity is  
13 sold somewhere else, that causes the amount of  
14 transfers back into ComEd to go up on megawatt to  
15 megawatt basis.

16 Q. The transfers to ComEd would go -- increase?

17 A. Yes.

18 Q. And how would that happen?

19 A. Because flows in and flows out of an area to  
20 another area cancel. So if they're limited to a  
21 2000 megawatt into ComEd, somebody built the 500  
22 megawatt plant and sold it outside of ComEd, you now

1 have 2500 megawatt of import capability.

2 Q. Right. But if ComEd needed 2000 -- or, say,  
3 if ComEd needed the 500 and that source sold it to  
4 someone else, would ComEd be able to get that 500  
5 megawatts?

6 A. Presuming that there's capacity somewhere,  
7 yes.

8 Q. No. I'm saying from that particular source.  
9 Would ComEd be able to get it from -- say, it's  
10 source A. Would they be able to get that 500  
11 megawatts from source A if source A sold it to  
12 someone else?

13 A. They would not get the 500 megawatt from  
14 source A but they would get --

15 Q. Okay. That's -- that's -- no, that's all I  
16 want.

17 A. -- of import capability.

18 Q. Okay. No, I just wanted to know as far  
19 as --

20 MR. REVETHIS: You're going to have to allow the  
21 witness to finish his answer, I think.

22 MR. REVETHIS: Do you want to restate your

1 answer, Mr. Larson? Do you have the question in  
2 mind?

3 THE WITNESS: Could I hear it again?

4 JUDGE ZABAN: Ms. Doss, I also assume your  
5 question indicates that source A is working at full  
6 capacity.

7 MS. DOSS: Yes.

8 JUDGE ZABAN: Okay. If that's her question,  
9 that's -- I mean, obviously, if it's working at full  
10 capacity and it gets sold to somebody else, source A  
11 can't provide it. All right. That's -- I don't  
12 think it needs -- we need to clarify any further.

13 MR. REVETHIS: Well, the witness didn't complete  
14 his answer and the court reporter wasn't able to  
15 take it down.

16 JUDGE ZABAN: He responded to her question.

17 (Whereupon, a discussion  
18 was had off the record.)

19 MR. REVETHIS: I'm sorry, could we have the  
20 question back?

21 MS. DOSS: I can rephrase it.

22 BY MS. DOSS:

1       Q.    If source A has 500 megawatts and that's all  
2   it has, it's operating at full capacity, if they  
3   sell that 500 megawatts to someone else other than  
4   ComEd, can ComEd use that 500 megawatts or have  
5   access to it?

6               Well, strike that.

7               Can ComEd use the 500 megawatts that --

8       A.    Of course not.

9       Q.    Okay. All right. Now --

10      A.    But --

11      Q.    Wait.

12      A.    Let's just say "but." They get 500  
13   additional megawatts of import capability, they  
14   would have to find 500 megawatts of capacity to buy  
15   it, but they would not be able to use the 500 in  
16   their territory.

17      Q.    Okay. And then also the new and transferred  
18   generation referenced in Appendix K of ComEd's  
19   notice of transfer, is it -- is that newer transfer  
20   generation exclusively for the use within Illinois?

21      A.    The answer is the same. If it's sold out of  
22   Illinois, it's not available for Illinois but that

1 Illinois gets 500 additional megawatts of import  
2 capability.

3 Q. But that the sources can sell without --  
4 outside of Illinois as well?

5 A. Yes, they can.

6 MS. DOSS: Okay. No further questions.

7 JUDGE SHOWTIS: Mr. Robertson?

8 MR. ROBERTSON: Thank you.

9 CROSS-EXAMINATION

10 BY

11 MR. ROBERTSON:

12 Q. Mr. Larson, this is Eric Robertson. Can  
13 hear me?

14 A. Yes.

15 Q. Could you turn to page -- or question and  
16 answer 11 in your testimony?

17 MR. REVETHIS: If you can read that -- well,  
18 in -- why don't we recite it to him.

19 MR. ROBERTSON: Oh, I'm sorry.

20 BY MR. ROBERTSON:

21 Q. Would you agree, Mr. Larson, that in  
22 question and answer No. 11 to your testimony you are



1 responding to the question that states? In summary,  
2 do you believe the transfer of ComEd's nuclear  
3 generating stations, fossil plant PPAs, and related  
4 assets will render ComEd unable to provide it's  
5 tariffed service in a safe and reliable manner?

6 A. I believe it will not render ComEd unable to  
7 provide reliable service.

8 Q. Okay. I don't think that's the answer  
9 that -- I know you don't have this with you.

10 I was merely asking, are you responding  
11 to that question in the con- -- in question and  
12 answer No. 11, would you agree that you are?

13 A. I have no way of knowing that.

14 MR. REVETHIS: Why don't you read the --

15 BY MR. ROBERTSON:

16 Q. Is it your opinion that the transfer will  
17 not render ComEd unable to provide its tariff  
18 service in a safe and reliable manner?

19 A. That's my opinion, yes.

20 Q. And it is your opinion based upon the fact  
21 that during the full requirements term of the PPA,  
22 ComEd's resources from the PPA combined with new

1 capacity in ComEd's territory is sufficient to  
2 provide reliable service?

3 A. Yes.

4 Q. And is your opinion based upon -- further  
5 based upon the assumption that after expiration of  
6 the PPAs an open and competitive market will  
7 maintain reliability at levels that customers  
8 demand?

9 A. I believe that's correct.

10 Q. And is it based further on the assumption  
11 that if the market does not develop then  
12 re-regulation will maintain reliability?

13 A. Yes, that's an assumption as well.

14 Q. All right. Now, can you explain to me what  
15 it is you mean by re-regulation?

16 A. What I meant with that phrase is that the  
17 Commission would have to acquire, if it does not  
18 already have, the authority to force Commonwealth  
19 Edison to build the capacity that's required to  
20 provide reliable service.

21 Q. Are you -- let me ask you this, Mr. Larson:  
22 Are you aware that there is a provision in the

1 public Utilities Act that was placed there as a  
2 result of the adoption of the Customer Choice Law in  
3 1997 that prohibits the Commission from directing  
4 the utilities in the -- public utilities in the  
5 State of Illinois to build generation?

6 A. I believe that is in there. There's also  
7 within that Act the fact that the Commission has the  
8 authority to oversee the reliability.

9 I'm not a lawyer, so I think whether the  
10 Commission would have that authority at this time is  
11 questionable.

12 Q. All right. Now, let me ask you, if any of  
13 these three assumptions turned out to be incorrect,  
14 would your opinions still be the same?

15 A. Which are the three assumptions, again?

16 Q. Any of the three?

17 MR. REVETHIS: Why don't you name them.

18 THE WITNESS: Well, yes. You would have to take  
19 the actions necessary for -- in each instance.

20 BY MR. ROBERTSON:

21 Q. So that if the competitive power market  
22 failed to develop, in order for you to still believe

1 there was no adverse impact from this transfer on  
2 reliability and safe provision of tariff service,  
3 there would have to be a re-regulation; is that  
4 correct?

5 A. Yes.

6 Q. All right. And if it turned out that  
7 re-regulation was not possible, then this transfer  
8 could result in a situation where Commonwealth  
9 Edison was not able to provide safe and reliable  
10 tariff service; is that correct?

11 A. Well, ComEd would be able to, if they  
12 wanted, they volunteered to build the capacity.  
13 They would not be required to build the capacity  
14 under the current law.

15 Q. Have you made any determination in your  
16 analysis, in your review of the documents that have  
17 been filed in this case that Commonwealth Edison has  
18 expressed in any way that it would volunteer to  
19 build the generation capacity that would be  
20 necessary to meet that obligation?

21 A. I believe there is testimony to that.

22 Q. Who was that?

1       A.    It may have been the fossil case, but I  
2 believe it was Mr. McDonald.

3       Q.    But not in this case?

4       A.    I'm not sure which case.

5       Q.    Okay.

6       A.    I do recall the language, in any event --  
7 quote, in any event, if all else fails, Commonwealth  
8 Edison will build the capacity.

9       Q.    And you don't know whether that was in a  
10 prior case or in this case; is that correct?

11      A.    Yes.

12      Q.    Okay.  Now, I'd like to talk to you about  
13 assumption or the assumption that's made here that  
14 the resources from the PPA combined with new  
15 capacity in the ComEd service territory is  
16 sufficient to provide reliable service, if I may.

17      A.    Yes.

18      Q.    You do not have a copy of your Attachment 3;  
19 is that correct?

20      A.    No, I don't, but I have a fairly good memory  
21 of it.

22      Q.    Okay.  Can you tell me what the source of

1 that document was?

2 A. There are several sources to that document.  
3 One is internal news service clippings that our news  
4 department puts together and sends to me as well as  
5 other staff people.

6 I get from the EPA a list of companies  
7 that have applied for EPA licenses, air permits,  
8 which also tells when they get the permits and  
9 when -- if they decide to back out of trying to  
10 receive the permits.

11 And I have several contacts with people  
12 who maintain their own lists, and we share lists  
13 from time to time on an informal basis.

14 Q. All right. Now, I'm looking at exhibit --  
15 or Attachment A to your testimony, and I'm looking  
16 at the first page and you have units completed total  
17 for 1999, 1,146 megawatts.

18 And you mentioned four units here,  
19 Mr. Larson or four projects: Elwood Energy, Dynegy  
20 Rocky Road -- sounds like an ice cream flavor --  
21 Illinois Power, and Soyland Power; is that correct?

22 A. Yes.

1 Q. Now, not all of those are inside the Edison  
2 service territory; is that correct?

3 A. That's correct.

4 Q. In fact, am I correct that assuming that the  
5 Illinois Power and the Soyland Power are not inside  
6 the ComEd service territory?

7 A. They are not.

8 Q. Is the Dynegy Rocky Road project inside?

9 A. Yes.

10 Q. Is the Elwood Energy project inside?

11 A. Yes.

12 Q. All right. All these projects have been  
13 completed?

14 A. Yes.

15 Q. Now, then you have new units in the year  
16 2000. Total of 3,708 megawatts.

17 A. Okay.

18 Q. All right. And are all of these units  
19 inside the ComEd service territory?

20 A. No.

21 Q. I'm going -- you don't have this in front of  
22 you and I didn't think it would take this long, but

1 I'm going to have to just quickly read these to you  
2 and tell us which ones are in and which ones are  
3 not, if you would, please.

4 A. Okay.

5 MR. REVETHIS: That's fine.

6 BY MR. ROBERTSON:

7 Q. Elwood Energy?

8 A. It is inside and it should be completed by  
9 now.

10 Q. Indeck?

11 A. It's inside and should be completed by now.

12 Q. Dynegy Rocky Road, additional 100 megawatts?

13 A. It is in ComEd and should be operational  
14 now.

15 Q. KN Energy?

16 A. That is -- can you tell me the location?

17 Q. That one says the air permit application was  
18 withdrawn. I assume that's --

19 A. That was in McHenry County. It would have  
20 been in ComEd territory.

21 Q. Okay. ENRON, 668 megawatts near Manhattan,  
22 Illinois?



1       A.    That's in ComEd's territory and should be  
2 near to completion or complete.

3       Q.    668 megawatts near Plano, Illinois, Kendall  
4 County?

5       A.    That's in ComEd territory.

6       Q.    What's the status of that one?

7       A.    I don't know at this time. I am thinking  
8 that it was perhaps a second site for the -- in  
9 other words, ENRON had two sites, developed one  
10 plant. I'm not sure of the status of that one at  
11 Plano.

12      Q.    Okay. Then we've got some to be built by  
13 Ameren in Gibson City and Pinckneyville, and I know  
14 those aren't in the Commonwealth Edison service  
15 territory; is that correct?

16      A.    Yes.

17      Q.    The Joppa plant is not inside Commonwealth  
18 Edison service territory; is it?

19      A.    No.

20      Q.    UniCom, 60 megawatts North Chicago, that  
21 plant's been canceled; hasn't it?

22      A.    I don't believe so.

1 Q. Was that in conjunction with Abbott Labs?

2 A. I didn't -- the plants I know about didn't  
3 have anything to do with Abbott Labs.

4 Q. Okay. Do you know whether UniCom is still  
5 in the generation business or has withdrawn from it  
6 altogether?

7 A. Well, they tell me that they've withdrawn  
8 altogether. They also lease several small peaking  
9 facilities around their territory.

10 This is one that I understood to be  
11 temporary in nature, and it is strictly for the  
12 purpose of shoring up the transmission systems.

13 Q. Okay. Southwestern Electric Coop, that's  
14 obviously not in Illinois?

15 A. No.

16 Q. Or, I mean, Commonwealth Edison; is that  
17 correct?

18 A. Right, it's not in Commonwealth Edison.

19 Q. The AES/CILCO project in Peoria and Lincoln,  
20 that's not in Commonwealth Edison?

21 A. No.

22 Q. The Reliant Energy in Shelby County and

1 Williamson County, that's not in Commonwealth

2 Edison?

3 A. No.

4 Q. The new units in 2001, the total of 1509

5 megawatts: Cal Energy and MidAmerican, Cordova

6 Energy Center, Quad Cities, that's not in

7 Commonwealth Edison; is it?

8 A. That's at the interface of Commonwealth

9 Edison and MidAmerican.

10 Q. That's the Quad Cities nuclear plant?

11 A. Yes.

12 Q. AmerenCIPS, Grand Tower, that's not in

13 Commonwealth Edison?

14 A. No.

15 Q. AES/CILCO, it's a Caterpillar project. I

16 assume that's not in Commonwealth Edison?

17 A. That's not in Commonwealth Edison.

18 Q. Then you got one here listed Rolls Royce

19 Lockport abandoned refinery. No megawatt figures.

20 Do you know where that one is?

21 A. Yes. That's in Commonwealth Edison's

22 territory.

1 Q. Then there's a Duke Energy project in Dixon.

2 A. That is in Commonwealth Edison's territory.

3 Q. All right. New units in 2002 or later:

4 Reliant in -- by the way, I take it that these units

5 for 2002 or later are in the planning process not

6 under construction?

7 A. Yes.

8 Q. And they've not been permitted?

9 A. I don't believe so.

10 Q. Do you know whether permits have been even

11 applied for?

12 A. The permits have been applied for in most

13 cases.

14 Q. The Reliant Energy project Aurora, I guess,

15 that's in ComEd?

16 A. Yes.

17 Q. And we got another, Carlton at Zion, that's

18 in ComEd?

19 A. Yes.

20 Q. The Skygen in Zion, that's in ComEd?

21 A. Yes.

22 Q. Mission Energy in Chicago, that's in ComEd?

1       A.    Yes, it is.

2       Q.    Then you show one in Reliant.  The Zoning

3 Board made a negative recommendation to the County

4 Board in McHenry County.  Is that in ComEd?

5       A.    That's in ComEd, but it's quite doubtful at

6 this time.

7       Q.    All right.  I'll try to shorten this up.

8                Would you agree that projects located in

9 Dixon, Illinois; Chicago, Illinois; Chicago Calumet;

10 DuPage; West Chicago; Will County. . .

11       A.    They're all Chicago -- or they're all

12 Commonwealth Edison.

13       Q.    Okay.  What about Kane County?

14       A.    Excuse me?

15       Q.    Kane County.

16       A.    That's Commonwealth Edison.

17       Q.    All right.  The Diminon Energy project in

18 Lincoln Generation, Kincaid, Christian County?

19       A.    That's not in Commonwealth Edison territory.

20       Q.    The Kinder Morgan project in Morris in

21 Grundy County?

22       A.    That is in ComEd's territory.

1 Q. The Entergy Power project, Flora Station in  
2 Flora and Clay County?

3 A. That is not Commonwealth Edison.

4 Q. Tuscola I know is not in Commonwealth  
5 Edison; is that correct?

6 A. Tuscola is not.

7 Q. Okay. Do you have a feel for how many  
8 megawatts of capacity are actually under  
9 construction and permitted authorized for  
10 construction inside the Commonwealth Edison service  
11 territory at this time?

12 A. It's breaking up because somebody is making  
13 clicking noises with something near a microphone.

14 Could you repeat the question.

15 Q. Yeah, do you have any feel for the amount of  
16 capacity that is actually under construction in  
17 Commonwealth Edison at this time, excluding those  
18 you've identify as completing?

19 A. Oh, okay. I believe there is an excess of  
20 roughly 2200.

21 Q. Now, were you aware of the proposals made in  
22 the Illinois General Assembly to impose a moratorium

1 on a construction of generation in Northern  
2 Illinois?

3 A. I'm generally aware of it, yes.

4 Q. If that type of legislation were to pass,  
5 would that have any impact on your opinion here?

6 MR. REVETHIS: I think you're starting to call  
7 for speculation of the witness. What specifically  
8 are you --

9 BY MR. ROBERTSON:

10 Q. If the General Assembly passed legislation  
11 similar to that which was proposed in the last  
12 session of the General Assembly to place a  
13 moratorium on the instruction of generation in  
14 Northern Illinois, would that have any effect on  
15 your opinion in this case?

16 MR. REVETHIS: I think the question is calling  
17 for speculation --

18 MR. ROBERTSON: I don't --

19 MR. REVETHIS: -- on something that's not.

20 MR. ROBERTSON: Well, it's a distinct  
21 possibility.

22 JUDGE ZABAN: It's a possibility but it also

1 assumes the fact that the conditions would be  
2 different if there wasn't a transfer. Okay?

3 I mean, we may be still faced with  
4 exactly the same problem even if we don't allow the  
5 transfer, if there's no additional -- okay. We've  
6 talked about potential shortfalls, and I don't  
7 necessarily see how lack of additional generating  
8 capacity would effect if, in fact, these plants were  
9 transferred.

10 MR. ROBERTSON: Well, I'm -- I don't know either  
11 but the witness has offered the opinion that he has  
12 arrived at the conclusion that the company is able  
13 to provide safe and reliable tariff service and he  
14 did so on the basis of three assumptions; one of  
15 which was there was going to be a lot of capacity  
16 built inside the Commonwealth Edison service  
17 territory.

18 And my question goes to the fact, if the  
19 General Assembly prohibits the construction of that  
20 capacity or substantial component of it, would his  
21 opinion be different.

22 JUDGE ZABAN: And you're also asking him that



1 some or none of the proposed plants that he has on  
2 his list will be built as well; is that correct?

3 MR. ROBERTSON: Yeah, because he says most of  
4 them are not under construction yet.

5 JUDGE ZABAN: To that extent, he can answer.

6 MR. REVETHIS: I think we're getting very remote  
7 here.

8 JUDGE ZABAN: It goes to weight, not to  
9 admissibility. Okay?

10 MR. REVETHIS: All right.

11 BY MR. ROBERTSON:

12 Q. Do you remember the question, Mr. Larson?

13 A. Yes. If the General Assembly passed such a  
14 law providing for a moratorium, it would make me  
15 reconsider my list of plants.

16 Q. And if it turned out that there was not as  
17 much capacity going to be built as you had assumed  
18 in your analysis, would your ultimate conclusion  
19 change?

20 MR. REVETHIS: Well, to what degree? I think the  
21 question is vague.

22 THE WITNESS: As far as the --

1       MR. REVETHIS:  Why don't you let him rephrase the  
2 question.

3       JUDGE ZABAN:  First, you got to let me rule on  
4 it.

5       MR. REVETHIS:  Yes.

6       JUDGE ZABAN:  Mr. Robertson, I'm going to assume  
7 that your question supposes that there is no  
8 additional capacity other than those plants that  
9 currently exist or are in the process of being  
10 built; is that what you're asking?

11      MR. ROBERTSON:  Correct.

12      MR. REVETHIS:  I can live with that.

13      JUDGE ZABAN:  Do you understand the question,  
14 Mr. Larson?

15      THE WITNESS:  Yes.

16      JUDGE ZABAN:  Well, you can answer.

17      THE WITNESS:  For the period from now till 2004,  
18 the transfer of the plants will not impact the  
19 reliability.  Whether or not the transfer takes  
20 place, the reliability will be unchanged.

21                   I would hope that by the year 2004 the  
22 General Assembly and power developers across the

1 nation would be able to reconcile with a usable law  
2 so that plants can be developed.

3 BY MR. ROBERTSON:

4 Q. Let me see if I understand --

5 JUDGE ZABAN: I think the second part of his  
6 answer is irrelevant. I think he answered your  
7 question in saying that, if that were to occur,  
8 based on the figures he has before him that through  
9 2004 nothing would change. I think that's the  
10 relevant portion of his answer.

11 BY MR. ROBERTSON:

12 Q. Let me see if I understand, if I may,  
13 Mr. Larson, and I was headed toward the same  
14 direction that the examiner was.

15 If I understood your answer, your opinion  
16 would be the same for the period from now until  
17 2004, but it might be different for the period after  
18 2004; is that correct?

19 A. Yes.

20 Q. Did you see your charge to the determine  
21 whether or not Commonwealth Edison was able to  
22 provide safe and reliable service only for the

1 period between now and 2004 or for some period  
2 beyond that?

3 A. I believe it includes some period beyond  
4 that.

5 MR. ROBERTSON: Thank you. No further questions.

6 JUDGE ZABAN: I have just a couple questions on  
7 what Mr. Robertson --

8 EXAMINATION

9 BY

10 JUDGE ZABAN:

11 Q. In your answer to Question 11, you made  
12 certain suppositions and one of them was that, if  
13 the market does not develop, then re-regulation will  
14 maintain reliability.

15 And in response to that, you said that  
16 you believe that at some time Mr. McDonald testified  
17 that Commonwealth Edison would be willing to do what  
18 is ever necessary, including building additional  
19 plants to meet capacity; is that correct?

20 A. Yes.

21 Q. Okay. Have you ever heard anything to that  
22 effect from Exelon Genco?

1       A.    No.

2       Q.    Okay.  And my next question then would be,  
3 you are aware that Exelon Genco when it gets formed  
4 will not be a public utility capable of being  
5 regulated by the Illinois Commerce Commission?

6       A.    I understand that to be a fact, yes.

7       Q.    Okay.  And do either of these factors change  
8 your opinion regarding your answer in No. 11?

9       A.    No.

10      JUDGE ZABAN:  Okay.  I have nothing further.

11             Mr. Riddick, do you have any questions?

12             Okay.  Anybody have any questions of --  
13 yes, go ahead.

14      MR. REVETHIS:  No.  It's all right.

15      JUDGE ZABAN:  Okay.  Mr. Larson, you're excused.

16             (Whereupon, a discussion  
17 was had off the record.)

18      JUDGE SHOWTIS:  Back on the record.

19             CONTINUED CROSS -EXAMINATION

20             BY

21             MR. RIDDICK:

22      Q.    I think -- Mr. Burdell, I've taken the last

1 half-hour to try to reduce everything else I had to  
2 say on the topic we were discussing before you broke  
3 to two questions. And I'm going to give it a shot.

4           The agreements that are attached to  
5 your -- to Commonwealth Edison's notice were  
6 provided to give the Commission and other parties a  
7 sense of the circumstances that would be in place  
8 after your transaction is completed; am I correct?

9       A. I think that's certainly part of it. It was  
10 to describe -- in addition to that, it was to  
11 describe the nature of transaction, the journal  
12 entries associated with recording the transaction  
13 and the justification that the transaction meets the  
14 two tests in the statute that are necessary to be  
15 met.

16       Q. Okay. And the agreements were not submitted  
17 for approval by the Commission yea or nay. They  
18 were simply to provide the factual basis for the  
19 Commission's analysis under 111(g)?

20       A. Correct.

21       Q. Okay. Moving on to a rate impacts.

22           Did your evaluation of possible scenarios

1 in their rate impacts include any examination of the  
2 possibility of refunds being paid by Commonwealth  
3 Edison upon dissolution of the decommissioning  
4 trusts?

5 A. When you say "rate impacts," you're talking  
6 about the return on equity calculations?

7 Q. Yes, I'm sorry. When I said "rate impacts,"  
8 I was referring to the ROE evaluation under 111(g).

9 A. Correct.

10 Q. Or D? D.

11 A. No, it did not.

12 Q. Okay. Would an immediate refund, say at the  
13 time of the transaction, by Commonwealth Edison have  
14 any effects on the accounts that are reflected in  
15 the ROE analysis under 111(d)?

16 MR. FLYNN: Could I ask what refund we're talking  
17 being? How does it arise?

18 MR. RIDDICK: 8-508.

19 THE WITNESS: They certainly would not lower the  
20 ROEs, which would increase the likelihood to trigger  
21 a rate request.

22 BY MR. RIDDICK:

1 Q. Okay. So even if that occurred, it would  
2 not effect the ROE analysis that's required by the  
3 statute?

4 A. It would not adversely effect it. That's  
5 correct.

6 MR. RIDDICK: Thank you. That's it.

7 FURTHER CROSS-EXAMINATION

8 BY

9 MR. ROBERTSON:

10 Q. I'm sorry, if I might, Mr. Burdell, are you  
11 saying that it would have some impact but it  
12 wouldn't drop you below the bottom end of the range  
13 for determining when a rate increase is to be  
14 authorized?

15 A. I don't believe it would -- it would have --  
16 I guess, it's uncertain to me the nature of the  
17 refunds, but I don't think it would have.

18 Depending upon how it was structure,  
19 would not reduce the return on equity. Because the  
20 presumption that I believe that Mr. Riddick is using  
21 is that the trusts are over funded and -- which  
22 triggers a refund from the trusts to ComEd and then



1 from ComEd to ratepayers.

2               So ComEd would receive monies that it  
3 would then transfer to ratepayers, so I don't think  
4 it would have an adverse effect on the return on  
5 equity calculations.

6       Q.    You're saying that because -- in your  
7 response, you're assuming that no refund would be  
8 due; is that correct?

9       A.    No.  I mean, I believe that no refund is  
10 due, but I was responding to Mr. Riddick's  
11 hypothetical that -- and I believe this was  
12 Mr. Riddick's hypothetical and if not, please  
13 correct it, Mr. Riddick.

14            But under Mr. Riddick's hypothetical, the  
15 trusts were over funded, which then triggers a --  
16 would trigger a refund at the point of the transfer  
17 to Genco.  That refund from the trust, according to  
18 the statute, is made to ComEd and then ComEd in turn  
19 refunds those monies to ratepayers.

20       Q.    All right.  Let me -- if I might, let me  
21 just ask you to assume that a refund is made under  
22 Section 8-508.1 for any reason, okay?

1 A. Sure.

2 Q. And is it possible that such a refund could  
3 impact the return on equity analysis that you have  
4 made?

5 A. Now, when you say "for any reason," is there  
6 another reason that the refund would be --

7 Q. Well, I don't --

8 A. -- triggered under 8-508?

9 Q. There are a number of reasons why a refund  
10 might be triggered in my opinion, but I don't think  
11 it's necessary to specifically identify the reason.  
12 --

13 A. Well, it is for me to respond to the  
14 question.

15 Q. -- in order to know if Commonwealth Edison  
16 was directed to make a refund at the time of the  
17 transfer for any reason specified in 8-508.1. would  
18 it have an impact on your analysis?

19 A. I don't have 8-508.1 in front of me so --

20 JUDGE ZABAN: It doesn't make any difference.  
21 All he's asking you is, if Commonwealth has to give  
22 this money back --

1 MR. ROBERTSON: What's the mechanical --

2 JUDGE ZABAN: -- irrespective of what the  
3 reasons -- act of God, you know, act of faith,  
4 whatever it is, will it impact the figures?

5 MR. FLYNN: Well, I think what the witness is  
6 saying is that it does depend on the circumstance  
7 because there are trust funds and there are  
8 obligations and depending on the relationship  
9 between the two of them, it can have an impact; and  
10 that's why the witness is befuddled by the  
11 hypothetical.

12 JUDGE ZABAN: Okay.

13 JUDGE SHOWTIS: Well, let's shorten this. Are  
14 you saying, Mr. Burdell, that under some  
15 circumstances refunds is made, pursuant to Section  
16 8-508.1, could have an impact on your analysis, or  
17 are you saying you're unaware of what those  
18 circumstances would be?

19 THE WITNESS: It's more the latter.

20 The only part of 8-508.1 that I'm aware  
21 of that would trigger a refund would be the fact  
22 that the trust would be found by the Commission to

1 be in excess of what is necessary to safely  
2 decommission the plants.

3 BY MR. ROBERTSON:

4 Q. What if the fact provided that a refund  
5 could be made to the extent Commonwealth Edison's  
6 liability for decommissioning was reduced?

7 A. Well, that's the same hypothetical.

8 JUDGE ZABAN: Well, no, it's not.

9 MR. ROBERTSON: No, it's not.

10 JUDGE ZABAN: It's not.

11 MR. FLYNN: Well, with all due respect, actually,  
12 it is. What the witness is saying is that it's the  
13 relationship between the level of funding and the  
14 level of the utility's obligation; and if the  
15 obligation goes down, then you have excess funding.

16 MR. ROBERTSON: Well, this is what I didn't want  
17 to get to into is to determine -- I want you to  
18 assume for me, Mr. Burdell, that. . .

19 JUDGE ZABAN: The only problem with your  
20 hypothetical, Mr. Robertson, it assumes something  
21 that doesn't exist, and I think you need to put it  
22 in terms of a hypothetical to him -- and I'm

1 assuming that you're saying here is, if the  
2 Commission doesn't allow the transfer of the trust,  
3 that Edison transfers the plants, they have no  
4 obligation. They have no decommissioning  
5 obligation.

6 MR. ROBERTSON: Well, let's assume that Genco  
7 said, We don't want your money, we'll do it  
8 ourselves.

9 JUDGE ZABAN: That's -- I think that's really  
10 farfetched.

11 MR. ROBERTSON: Well, I'm trying to get him to  
12 answer the question.

13 JUDGE ZABAN: I mean, that's really farfetched as  
14 a hypothetical.

15 BY MR. ROBERTSON:

16 Q. Well, let's assume that Genco says, We  
17 really only wanted 50 percent of what's in the  
18 decommissioning fund. We don't -- we can do the  
19 rest ourselves, and Commonwealth Edison is -- it's  
20 liability is reduced by 50 percent and it's directed  
21 to make a refund.

22 Would that impact your --

1 JUDGE ZABAN: I'm not going to allow this, and  
2 I'll tell you why because I think in addition to  
3 getting into that hypothetical, you're going to have  
4 get into at what point and at what percent, okay, it  
5 impacts, and I don't think we really -- that's  
6 germane.

7 I mean, you're talking about something  
8 that -- its likelihood of happening is remote or  
9 almost nonexistent. And even if it was, you get  
10 into the issue then of, And what percent? And I  
11 don't think that's really relevant at this point.

12 BY MR. ROBERTSON:

13 Q. Well, Mr. Burdell, wasn't it your testimony  
14 earlier that Genco was assuming 100 percent of  
15 liability for decommissioning the plants after the  
16 transfer?

17 A. Yes.

18 Q. All right. If Genco assumes 100 percent of  
19 the liability and Edison no longer has any liability  
20 and the Commission directs that \$2.5 billion be  
21 refund to customers and you've already transferred  
22 the assets to Genco, wouldn't Commonwealth Edison

1 pay that money out of current revenues?

2 A. I disagree with your hypothetical. I don't  
3 think the company would transfer --

4 JUDGE ZABAN: Okay. But you can't disagree with  
5 a hypothetical. You got to - in a hypothetical, you  
6 have to assume that it's true, okay? And we'll give  
7 it the appropriate weight. I just want to assume  
8 that it's true.

9 THE WITNESS: Okay. If it's true, then the  
10 Commission directs the 2.5 million to be paid out of  
11 the trust to ComEd, ComEd turns around and refunds  
12 that to ratepayers.

13 And is it already settled? I'm just  
14 trying to understand the hypothetical. ComEd's  
15 already settled the decommissioning obligation with  
16 the Genco? Because part of the -- part of this  
17 settlement with Genco is ComEd turns over that  
18 2 1/2 billion --

19 JUDGE ZABAN: Okay. But the hypothetical assumes  
20 that for some reason they can't turn over the  
21 2 1/2 billion.

22 MR. ROBERTSON: It's assumed that this action is

1 completed Commonwealth Edison acts on the contract,  
2 which says it's transferring these assets to the  
3 Genco, and they've turned over the 2.5 billion, and  
4 the Commission in a later proceedings, says, Whoops.

5 JUDGE ZABAN: Well, it doesn't make a difference  
6 what it does in a later proceeding. The point --

7 THE WITNESS: ComEd must refund 2 1/2 --

8 JUDGE ZABAN: All you got to worry about is  
9 Commonwealth Edison must refund 2 1/2 billion for  
10 whatever reason.

11 THE WITNESS: Yes, that could adversely impact  
12 the return on equity calculations.

13 MR. ROBERTSON: That's all I wanted to know, is  
14 could this impact --

15 JUDGE ZABAN: All right.

16 Does anybody have anything further for  
17 Mr. --

18 MR. WARREN: I just have a quick one.

19 CROSS-EXAMINATION

20 BY

21 MR. WARREN:

22 Q. Mr. Burdell, this is Larry Warren from the



1 Attorney General's Office. Can you hear me?

2 A. Yes, I can.

3 Q. You mentioned earlier in a response -- I  
4 believe it was to one of Mr. Riddick's questions --  
5 you referred to the cost of power from Genco to  
6 ComEd during the four-year period through 2004. It  
7 has already been determined; is that correct?

8 A. That's correct.

9 Q. Okay. Was that -- were those cost figures,  
10 those yearly cost figures, determined using the  
11 assumption that all the agreements that are attached  
12 or appended to this transfer are going to go through  
13 as written?

14 A. Well, I'm not sure I understand that  
15 question but --

16 Q. The figures that you --

17 A. The basis of the figures that were used were  
18 to approximate the cost that ComEd had in those  
19 various assets and agreements that were being  
20 transferred over to the Genco.

21 In other words, the cost of the nuclear  
22 energy produced combined with the cost of the energy

1 under the PPAs and such were fed into a model to  
2 determine what the price of the PPAs should be.

3 Q. Okay. My question basically is, if any of  
4 those assumptions proved to be incorrect for  
5 whatever reason, would the -- would that impact what  
6 those costs -- power cost figures are for -- through  
7 2004 or could it?

8 A. No, the costs are fixed as described in the  
9 agreements.

10 MR. WARREN: Okay. That's all I want.

11 JUDGE ZABAN: Okay. Mr. Flynn, do you have any  
12 other question of Mr. Burdell?

13 MR. FLYNN: Yes.

14

15 CROSS-EXAMINATION

16 BY

17 MR. FLYNN:

18 Q. Do you recall, Mr. Burdell, a hypothetical  
19 put to you by Mr. Robertson a few minutes ago?

20 A. Yes, I do.

21 Q. All right. Is it ComEd's intent to transfer  
22 the nuclear plants if there's a possibility that it

1 would have to make significant refund to customers  
2 that is not commensurate with a reduction in it's  
3 decommissioning liability?

4 A. It is unlikely that ComEd would transfer the  
5 plants to the Genco until such time as the  
6 decommissioning issue is resolved.

7 Q. Thank you.

8 It seems like a long time ago, but very  
9 early in your time on the stand Mr. Robertson asked  
10 you some questions about write-offs and you  
11 distinguished between write-down and write-off.

12 Does a write-down have an effect on the  
13 income statement?

14 A. No, not in a context of my description. A  
15 write-down in one asset value would cause the  
16 write-up of another asset by an equal amount, so it  
17 would not an effect on the income statement.

18 Q. All right. And to clarify, the accounting  
19 entries that you describe in Appendix H represent a  
20 write-down of the investment in the nuclear plants;  
21 is that correct?

22 A. That's correct.

1 MR. FLYNN: That's all I have.

2 RECROSS -EXAMINATION

3 BY

4 MR. ROBERTSON:

5 Q. Mr. Burdell, whose books would reflect this  
6 write-up and write-down?

7 A. That would be the -- at the point of the  
8 merger, that would be on UniCom's books and likely  
9 on ComEd's books. Then at the creation of the  
10 Genco, some of those assets would be transferred to  
11 the Genco.

12 JUDGE ZABAN: Okay. No further questions for  
13 Mr. Burdell?

14 Okay. Mr. Burdell, you're excused.  
15 Thank you for appearing.

16 (Witness previously sworn.)

17 PHIL A. HARDIS,  
18 having been called as a witness herein, after having  
19 been first duly sworn, was examined and testified as  
20 follows:

21 DIRECT EXAMINATION

22 BY

1 MR. REVETHIS:

2 Q. Sir, would you kindly state your name, title  
3 and business address for the record, if you would,  
4 please.

5 A. Yes. My name is Phil Hardis. I'm a  
6 financial analyst, appearing on behalf of the  
7 financial department for the Illinois Commerce  
8 Commission. That's on 527 East Capitol,  
9 Springfield, Illinois 62794.

10 Q. Sir, do you have before you a document which  
11 has been previously marked for purposes of  
12 identification as ICC Staff Exhibit 2, which is  
13 entitled the unredacted direct testimony of Phil A.  
14 Hardis?

15 A. Yes, I do.

16 Q. And do you also have before you a document  
17 which is also identified for purposes of  
18 identification as ICC Staff Exhibit 2, the redacted  
19 direct testimony of Phil A. Hardis?

20 A. Yes.

21 Q. Both dated June 2000 and both consisting --  
22 well, the unredacted version consisting of seven

1 pages of narrative testimony along with schedules  
2 2.1 and 2.2 and the redacted direct testimony does  
3 not clue those schedules; is that correct, sir?

4 A. Yes.

5 Q. Okay. Now, I ask you, sir, were both  
6 these -- both the unredacted and redacted versions  
7 of this testimony prepared by you, sir, or under  
8 your direction and control?

9 A. Yes.

10 Q. And if I were to ask you exactly the same  
11 questions as set forth therein here and now, would  
12 you, in fact, give exactly the same responses here  
13 today?

14 A. Yes.

15 Q. Is it your intention that this be your sworn  
16 direct testimony in this proceeding?

17 A. Yes, it is.

18 Q. Do you have any additions, modifications or  
19 corrections you wish to make to either your  
20 unredacted or redacted testimonies?

21 A. No.

22 Q. And is it your intention that this be your

1 sworn testimony in this providing, sir?

2 A. Yes, it is.

3 MR. REVETHIS: We at this time, Mr. Examiner, ask  
4 that the -- both the unredacted and redacted  
5 versions of Mr. Phil A. Hardis' testimony be  
6 admitted into evidence at this time along with  
7 schedules 2.1 and 2.2 of the unredacted version also  
8 be admitted into evidence at this time, and we offer  
9 the witness for cross-examination also at this time.

10 JUDGE ZABAN: Okay. Any objections?

11 Both the redacted and unredacted  
12 testimony of Mr. Hardis previously as marked a Staff  
13 Exhibit No. 2 will be admitted into evidence.

14

15 (Whereupon, Staff  
16 Exhibit No. 2 was admitted  
17 into evidence.)

18 JUDGE SHOWTIS: And, Mr. Revethis, I assume if  
19 you're providing the unredacted version along with  
20 the schedules, that you make clear when they're  
21 handed to the court reporter to be marked that  
22 they're in a separate envelope and marked as

1 confidential.

2 MR. REVETHIS: Yes.

3 EXAMINATION

4 BY

5 JUDGE SHOWTIS:

6 Q. Mr. Hardis, I just have one question.

7 A. Go ahead.

8 Q. If you turn to Page 5 of your testimony?

9 A. Would this be the redacted or unredacted  
10 version?

11 Q. Well, it's the unredacted, but I don't think  
12 I'm going to be asking you about anything that's  
13 confidential.

14 A. Okay.

15 Q. It's probably in both versions, actually.

16 You're referring on Line 102 to an  
17 additional non-generating asset that was excluded in  
18 the original filing; do you see that?

19 A. Yes, I am.

20 Q. What are you referring to there? Is that  
21 related to Concomber or is that something else?

22 A. I'm sorry, can you repeat that?



1 Q. Is that related to Concomber or is that  
2 something else?

3 A. It's related to the difference between  
4 00-0244 and the new docket, 0394.

5 Q. Well, what is that? I guess to make -- to  
6 shorten it, what is that asset that you're  
7 referencing?

8 A. ComEd -- I spoke with ComEd. They -- and I  
9 data requested them asking specifically if there was  
10 any differences between the docket and additional  
11 non-generating assets or generating.

12 They responded to me that there was a  
13 difference in non-generating assets, but that it was  
14 around a million dollars or less.

15 So then in my testimony, I responded to  
16 that, if this is correct, that this would not alter  
17 the ROE calculations significantly but that they  
18 should also supply some documents -- I'm sorry,  
19 financial statements reflecting the changes caused  
20 by this additional non-generating asset.

21 Q. Did they supply it to you?

22 A. No, they did not. And that's why I added it

1 in my testimony because of the expedited nature of  
2 this, and I didn't have the information in front of  
3 me; so I wanted to make sure that it would be  
4 submitted into the hearing.

5 MR. FLYNN: And for the examiners, the company is  
6 proposing to file those as late-filed exhibits.

7 JUDGE SHOWTIS: My sole reason for inquiring was  
8 to see whether this information was going to be  
9 provided.

10 MR. FLYNN: And the travel schedule of  
11 Mr. Burdell that compelled him to testify by  
12 telephone --

13 JUDGE ZABAN: Okay. We'll allow the late filing.

14 JUDGE SHOWTIS: That's all I had. I was just  
15 trying to clarify if you'd receive that information  
16 or how it was going to get in the record.

17 THE WITNESS: No, I have not, and that's why I  
18 wanted to add it to my testimony so that it would be  
19 known that there was a difference in the  
20 non-generating asset, and the company has specified  
21 the approximate amount was a million dollars.

22 JUDGE SHOWTIS: Okay. That's fine.

1 JUDGE ZABAN: Okay. Hold on one second,

2 Mr. Hardis.

3 (Whereupon, a discussion

4 was had off the record.)

5 JUDGE ZABAN: Mr. Hardis, are you there?

6 THE WITNESS: Yes.

7 MR. REVETHIS: There's some additional cross for  
8 you.

9 JUDGE ZABAN: Some people have some questions  
10 they need to ask you.

11 Mr. Riddick?

12 MR. RIDDICK: Thank you, Mr. Hearing Examiner.

13

14

15 CROSS-EXAMINATION

16 BY

17 MR. RIDDICK:

18 Q. Conrad Riddick representing the City of  
19 Chicago.

20 Mr. Hardis, in your analysis of the ROE  
21 under the statutory provisions of 16-111, did you  
22 review any scenarios that included a possible refund

1 by Commonwealth Edison?

2 A. Not directly. I do not know exactly what  
3 the exact refunds would be, but it's definitely  
4 clear that it would have depend on what the effect  
5 would be under net income.

6 Q. So --

7 A. And without exact calculations, that would  
8 be difficult to calculate.

9 Q. Well, let's not talk about numbers now  
10 because I'm interested more in the mechanics.

11 A. Okay.

12 Q. So whether or not the ROE would be effected  
13 depends in part on how the refund showed up on  
14 books; that is, what account were effected?

15 A. Yes, that would be apparent and also to what  
16 level the amount would also be a factor.

17 Q. Okay. So, first, depending on the  
18 circumstances of the refund, it's possible that an  
19 account that is involved in the ROE evaluation might  
20 be effected by some amount. Let's worry about the  
21 amount separately. Yes, no?

22 A. Well, that depends to how this refund is

1 going to be implemented and to what effects it would  
2 have on the company's net income.

3 Q. But it is possible that an account that's  
4 involved in the ROE evaluation could be effected?

5 A. I'm not sure how that refund would work and  
6 exactly how it would effect the net income.

7 Q. The question is whether or not you can say  
8 that no matter how the refund was implemented, it  
9 would have no effect on the ROE evaluation. Can  
10 make that statement?

11 A. I don't know for sure. If the refund would  
12 be issued and to what precise implementation the  
13 refund will have, so therefore it's hard for me to  
14 say exactly how it would effect the ROEs.

15 Q. But it's possible that the ROE might --

16 MR. REVETHIS: I think --

17 JUDGE ZABAN: Mr. Riddick, I mean, the point  
18 is --

19 MR. REVETHIS: He's beating him like a veal calf  
20 now.

21 JUDGE ZABAN: I think at this point it's  
22 argumentative. He's told you he doesn't enough

1 information, okay?

2 MR. RIDDICK: It's difficult to see how he  
3 doesn't have enough information.

4 JUDGE ZABAN: Okay. Well, it doesn't --

5 MR. RIDDICK: I'm not asking the witness --

6 MR. REVETHIS: I think he's answered the  
7 question --

8 MR. RIDDICK: Let me --

9 MR. REVETHIS: -- as best he.

10 MR. RIDDICK: -- make my argument, Mr. Revethis,  
11 please.

12 MR. REVETHIS: Okay.

13 MR. RIDDICK: I'm not asking the witness how it  
14 would be effected. I'm simply asking him, as an  
15 accounting matter, whether it's possible, as an  
16 accounting matter, and he is an accountant, whether  
17 it's possible that an account involved in his ROE  
18 analysis might be effected.

19 JUDGE ZABAN: Okay. Mr. --

20 MR. REVETHIS: The witness is not willing to  
21 speculate under oath. That's clear.

22 JUDGE ZABAN: Let's do it this way. Mr. Hardis,

1 are you there?

2 THE WITNESS: Yes.

3 JUDGE ZABAN: Is there any possible scenario

4 under which Commonwealth Edison would be compelled

5 to make a refund to its customers which could effect

6 the ROE?

7 THE WITNESS: Okay, first case, I'm not actually

8 an accountant. I'm a financial analyst. And -- so

9 I want to get that straight.

10 And also if there is a refund that would

11 be submitted and it changed the net income then,

12 yes, it would effect ROE calculation.

13 JUDGE ZABAN: Okay. Fine. All right. Next

14 question, Mr. Riddick.

15 MR. RIDDICK: That's it.

16 JUDGE ZABAN: Okay. Fine.

17 Anybody else have any questions of

18 Mr. Hardis.

19 Okay. Thank you.

20 MR. REVETHIS: No redirect. Thank you.

21 JUDGE ZABAN: Thank you, Mr. Hardis. You're

22 excused.

1                   Okay. Any other witnesses?

2       MR. RIDDICK: You have one more, don't you?

3       MR. REVETHIS: Yes, Ms. Goldberger. But I have  
4 an affidavit.

5       MR. RIDDICK: And then Mr. Manshio.

6       MR. REVETHIS: It's my understanding there's no  
7 cross for Ms. Goldberger.

8       MR. RIDDICK: Actually, because he couldn't  
9 answer the question, she is the accountant; right?

10      JUDGE ZABAN: First of all, you know what , I'm  
11 not going to even let you ask the question because  
12 really -- what you're really talking about is  
13 something that's really speculative, and  
14 Commonwealth Edison has already answered that if the  
15 deal -- if the refund you're talking about doesn't  
16 go through, they're just not going to do the deal,  
17 okay?

18                   And I think that's readily apparent and  
19 we agree that there are -- it's repetitive at this  
20 point, Mr. Riddick. The point is, yes, if  
21 Commonwealth Edison is required to pay \$10 billion  
22 it can effect their ROE.



1                   But I think Commonwealth Edison has  
2 answered the question by saying, if we're required  
3 to pay \$10 billion, we're not going to do deal. And  
4 I think we can deal with that appropriately in the  
5 order.

6           MR. REVETHIS: And there's some scope concerns  
7 here also, I think so.

8           JUDGE ZABAN: Okay. Do you want to put  
9 Ms. Goldberger on?

10          MR. REVETHIS: Yes.

11

12

13

14

15                               (Witness previously sworn.)

16                               KAREN A. GOLDBERGER,  
17 having been called as a witness herein, after having  
18 been first duly sworn, was examined and testified as  
19 follows:

20                               DIRECT EXAMINATION

21                               BY

22                               MR. REVETHIS:

1 Q. Ms. Goldberger?

2 A. Yes.

3 Q. Would you kindly state your name, title and  
4 business address for the record, if you would,  
5 please.

6 A. My name Karen A. Goldberger. My business  
7 address is 527 East Capitol Avenue, Springfield,  
8 Illinois 62701.

9 Q. Ms. Goldberger, do you have a document  
10 before you which has been previously marked for  
11 purposes of identification as ICC Staff Exhibit 1,  
12 entitled the direct testimony of Karen A.  
13 Goldberger, dated June 2000 consisting of nine pages  
14 of narrative testimony?

15 A. Yes, I do.

16 Q. And, Ms. Goldberger, was this testimony, in  
17 fact, prepared by you or under your direction and  
18 control, ma'am?

19 A. Yes, it was.

20 Q. Do you have additions, modifications or  
21 corrections you wish to make to same?

22 A. No.

1 Q. If I were to ask you exactly the same  
2 questions as set forth herein, would you, in fact,  
3 give exactly the same responses here and now today?

4 A. Yes, I would.

5 Q. Is it your intention that this be your sworn  
6 testimony in this proceeding?

7 A. Yes.

8 MR. REVETHIS: Mr. Examiner, at this time we ask  
9 that the direct testimony of Karen A. Goldberger  
10 dated June 2000 previously marked for purposes of  
11 identification as Illinois Commerce Commission Staff  
12 Exhibit 1 be admitted into evidence at this time and  
13 we proffer the witness for cross-examination also.

14 JUDGE ZABAN: Okay. Any objections to the  
15 admission of the document into evidence?

16 The testimony of Karen Goldberger will be  
17 admitted as Staff Exhibit No. 1 .

18 (Whereupon, Staff  
19 Exhibit No. 1 was admitted  
20 into evidence.)

21 MR. REVETHIS: Thank you, Mr. Examiner.

22 JUDGE ZABAN: Any cross?

1 MR. RIDDICK: But for the Hearing Examiner's  
2 ruling, I would ask the same question that I asked  
3 of Mr. --

4 JUDGE ZABAN: Okay. It's noted for the record.

5 MR. REVETHIS: Thank you, Ms. Goldberger.

6 JUDGE ZABAN: Okay. Do you have any other  
7 witness?

8 MR. FLYNN: We have Mr. Manshio.

9 JUDGE ZABAN: Mr. Manshio, would you please raise  
10 your right hand.

11

12

13

14

15 (Witness sworn.)

16 CALVIN MANSHIO,

17 having been called as a witness herein, after having

18 been first duly sworn, was examined and testified as

19 follows:

20 DIRECT EXAMINATION

21 BY

22 MR. FLYNN:

1 Q. Would you please state your name for the  
2 record.

3 A. My name is Calvin Manshio, M-a-n-s-h-i-o.

4 Q. Mr. Manshio, you have before you a document  
5 previously marked as ComEd Exhibit 2 bearing the  
6 caption direct testimony of Calvin Manshio, partner,  
7 Manshio & Wallace.

8 Is this a copy of your direct testimony  
9 in this case?

10 A. Yes, it is.

11 Q. Is this testimony true and correct to the  
12 best of your knowledge?

13 A. Yes, it is.

14 MR. FLYNN: Mr. Examiner, I would move for the  
15 admission into evidence of ComEd Exhibits 1 and 2  
16 and tender Mr. Manshio for cross-examination.

17 JUDGE ZABAN: Okay. Are you asking that  
18 Mr. Manshio's proffered testimony be admitted into  
19 evidence as well?

20 MR. FLYNN: Yes. That's Exhibit 2.

21 JUDGE ZABAN: Okay. Any objection to the  
22 admission of Commonwealth Edison's Exhibits 1 and 2?

1 MR. RIDDICK: Yes.

2 JUDGE ZABAN: What is the nature of the  
3 objection?

4 MR. RIDDICK: Substantial portions, if not all,  
5 of the testimony seems to me to be legal argument  
6 properly reserved for brief. These are exactly the  
7 same issues that Mr. Flynn has argued this morning  
8 during numerous objections.

9 JUDGE ZABAN: Okay. Your objection will be noted  
10 for the record. We're going to -- what I'll do is  
11 I'll admit the testimony, okay, subject to your  
12 objection. Okay?

13 And we can have individual rulings on  
14 those portions of testimony that is objectionable;  
15 and at a later date, we can strike it from the  
16 record, if necessary. Okay?

17 So in other words, I'll admit them --

18 MR. RIDDICK: Clarification, do you mean as a  
19 part of the briefing or on a separate motion?

20 JUDGE ZABAN: Well, we can do is, as part of the  
21 briefing, you can raise those issues of testimony  
22 that you find objectionable and we can rule on it at

1 that time. But for the purposes of continuity, I'm  
2 just going to admit the document and then it will be  
3 given the appropriate weight based on the arguments.

4 MR. WARREN: Mr. Examiner, for the record, I'd  
5 like to join in on that objection.

6 JUDGE ZABAN: That's fine. And at any time  
7 during the briefing schedule, you're free to do it.  
8 Once the objection is made for the record, anybody  
9 who wants to participate can .

10 (Whereupon, ComEd  
11 Exhibit Nos. 1 and 2 were  
12 admitted into evidence.)

13 JUDGE ZABAN: Okay. Does anybody have any  
14 questions of Mr. Manshio at this time?

15 MR. ROBERTSON: I do.

16 JUDGE ZABAN: Okay. Mr. Robertson.

17 MR. ROBERTSON: Thank you.

18 CROSS-EXAMINATION

19 BY

20 MR. ROBERTSON:

21 Q. Mr. Manshio, would you turn to Page 7 and 8  
22 of your testimony.

1       A.     Okay.  I'm there.

2       Q.     There you -- beginning at Line 155, you  
3     present a quotation from a report submitted to the  
4     General Assembly by the Illinois Commerce  
5     Commission; is that correct?

6       A.     That's correct.

7       Q.     And it related to legislation that was in  
8     pending before the General Assembly with regard to  
9     customer choice and rate relief, restructuring the  
10    electric industry; is that correct?

11      A.     That's correct.

12      Q.     Now, do you agree with the analysis of  
13    the -- that's contained in the quotation there?

14      A.     I generally agree with it.

15      Q.     Are there parts of it you disagree with; and  
16    if so, what are they?

17      A.     Other parts of the report probably; but as  
18    far as this statement goes , I agree with the quoted  
19    statement.

20      Q.     Okay.  Now, if I understand this statement  
21    and your agreement with it, essentially, it's your  
22    position that 16-111(g) gives the utility the



1 authority to enter in, implement reorganization,  
2 retire generating plants from service, transfer  
3 utility assets to affiliated or unaffiliated  
4 entities and enter into power purchase agreements  
5 under the procedure that we're here in today; is  
6 that correct?

7 A. Just to clarify, the cited report is from  
8 the precursor to what became the Customer Choice  
9 Act, Senate Bill 55, which did not pass. But the  
10 language that was contained in Senate Bill 55 was  
11 eventually adopted by the General Assembly in the  
12 Customer Choice Act.

13 Q. Just so I understand, the language that is  
14 being summarized and analyzed here is the same  
15 language that now appears in 16-111(g); is that  
16 correct?

17 A. It's my understanding, yes.

18 Q. And by here, I mean in the quotation that  
19 appears at Lines 155 through 175 of your testimony?

20 A. That's correct.

21 Q. On Page 9 of your testimony, Lines 201 to  
22 206, they talk about a public intra-standard and the

1 fact that 16-111(g) limits intervention and time for  
2 hearing and that this is a demonstration that there  
3 was a balancing of competing interests; is that  
4 correct?

5 A. Generally, yes.

6 Q. And this statement is made in reference to  
7 the transfer -- or the Commission's review of asset  
8 dispositions; is that correct?

9 A. Yes. Specifically the lines that you've  
10 cited deal with the distinctions that exist between  
11 Section 7-102 and 16-111(g).

12 Q. And you also refer to, at Line 211, a sset  
13 dispositions at that location in your testimony; is  
14 that correct?

15 A. That's correct.

16 Q. And those are the assets of the electric  
17 utility, public utility?

18 A. That's correct.

19 Q. At Line 245 to 248, Page 11 of your  
20 testimony, you suggest it would be inappropriate for  
21 the Commission to consider decommissioning charges  
22 or costs in the context of this proceeding; is that

1 correct? Issues relating to decommissioning charges  
2 or costs in the context of this proceeding; is that  
3 correct?

4 A. I like your later phrasing of the question  
5 better, the issues related to.

6 Q. Am I correct that --

7 A. Yes, you are correct.

8 Q. And where, in your opinion, would it be  
9 appropriate for the Commission to consider this --  
10 or these issues?

11 A. I believe the Customer Choice Act creates a  
12 specific provision under 16-114, which relates to  
13 decommissioning.

14 Q. Do you know whether or not it can be  
15 considered under Section -- or do you have a feeling  
16 as to whether or not it would be appropriate to  
17 consider this under Section 8-805.1 and the  
18 provision of the Act that relates to the  
19 establishment of the nuclear decommissioning rider  
20 in the first instance?

21 The section escapes me right now.

22 A. It would probably be appropriate, but I

1 think -- if I can expand on that, you need to  
2 consider it in a larger context.

3           The history behind the decommissioning  
4 funds why there were set up; and if you take that  
5 into consideration, public policy has evolved  
6 through the legislature activity, Illinois Commerce  
7 Commission, in dealing with the decommissioning  
8 trust funds.

9           There's kind of a logical sequence of  
10 events that have created separate decommissioning  
11 trusts and the fact that those funds -- the funding  
12 is separate from base rates.

13           So if you -- you can cite a different  
14 section of the statute, 8-508 or 16-114; but in  
15 order to get a complete view of how the General  
16 Assembly and the Commission has viewed  
17 decommissioning trusts obligations by the utility  
18 and how consumers should pay for it, you really have  
19 to consider how it's evolved through the various  
20 Commission proceedings.

21       Q.    Okay. Do you believe that a utility can  
22 enter into an agreement in the context of a

1 16-111(g) proceeding that otherwise violates the  
2 Public Utilities Act?

3 A. I would think not.

4 Q. Line 251 of your testimony, you talk about  
5 the fact that the Commission, in your opinion,  
6 cannot expand the scope of its authority under  
7 16-111(g) regardless of its motivation for doing so;  
8 is that correct?

9 A. That's correct.

10 Q. Can a utility use Section 16-111(g) for  
11 something -- strike that.

12 If you would go to Page 12 of your  
13 testimony and your statement at Lines 268 to 271,  
14 you don't believe 16-111 -- or that the Commission  
15 may not condition its approval in a 16-111(g)  
16 proceeding on decommissioning related matters; do  
17 you see that?

18 A. Yes, I do.

19 Q. If the Commission found that a particular  
20 asset was -- should be retained by an electric  
21 utility because it was needed to provide safe and  
22 reliable tariffs service, do you have an opinion as

1 to whether or not the Commission would have the  
2 authority to modify the notice filed by the utility  
3 to exclude that asset or would they have to reject  
4 the notice in its entirety?

5 A. I think that it would have to be rejected in  
6 its entirety.

7 Q. So you don't believe the Commission can --  
8 as you refer to it, the Commission's approval here  
9 may not be conditioned in any way; is that correct?

10 A. I don't believe --

11 Q. In your opinion.

12 A. I believe there's two criterias set up by  
13 16-111(g), and the Commission's obligation to  
14 determine whether or not those two conditions create  
15 a situation where the Commission, in effect, would  
16 not approve the transaction.

17 Let me clarify, by approval, I don't mean  
18 the Commission, in effect, has to formally approve  
19 it. I mean, there's a mechanism within the statute  
20 where once the notice is provided to the Commission,  
21 the Commission doesn't even have to have hearings.

22 Q. Now, at Line 381 to 384 of your testimony,

1 you suggest that the Commission can determine from  
2 the ComEd notice which assets and obligations are  
3 being transferred to whom, why and on what terms and  
4 conditions and how the company will operate after  
5 the transfer; is that correct?

6 A. That's correct.

7 Q. Would you point out to me or can you direct  
8 me to any particular exhibit attached to the notice  
9 of filing, the notice of filing itself or either the  
10 testimony of Mr. Burdell or Mr. McDonald that states  
11 the exact terms and conditions upon which the  
12 nuclear decommissioning trust fund will be  
13 transferred?

14 A. It's been a while since I've looked at that.  
15 I could not at this point without looking at the  
16 documents cite a particular exhibit.

17 Q. Okay. Do you want to take a moment to see  
18 if you can find something you can refer me to?

19 I don't mean just a statement that  
20 they're going to transfer it but, I mean, something  
21 that actually describes the exact terms and  
22 conditions of the transfer.

1 JUDGE ZABAN: Take a short recess.  
2 (Whereupon, a brief  
3 recess was taken.)  
4 JUDGE ZABAN: Mr. Manshio, have you had an  
5 opportunity to examine the documents.  
6 THE WITNESS: Yes, I have.  
7 JUDGE ZABAN: Has your memory at this point -- is  
8 your recollection refreshed?  
9 THE WITNESS: Yes.  
10 JUDGE ZABAN: Okay.  
11 THE WITNESS: Do you want me to just answer it or do  
12 you want to repeat the question?  
13 JUDGE ZABAN: If you recall the question, you can  
14 just answer the question.  
15 THE WITNESS: I believe the question related to  
16 what did I base the terms and conditions in my  
17 testimony on Page 17, Line 386.  
18 Basically, it was my review of the notice  
19 to the Commission and specifically Exhibit C, which  
20 deals with the facilities agreement and, D, the  
21 power purchase agreement.  
22 BY MR. ROBERTSON:



1 Q. The terms and conditions of the transfer of  
2 the nuclear decommissioning trust fund is what the  
3 question went to, not the nuclear generating assets.

4 A. I guess I don't distinguish between the  
5 trust fund and the facilities.

6 Q. You consider to be the assets -- the assets  
7 and the trust fund to be an asset of Commonwealth  
8 Edison?

9 A. No, that isn't what I said.

10 Q. Okay.

11 A. I consider the nuclear plants and the trust  
12 funds to be linked so the that trust funds goes with  
13 the facilities. If I can elaborate on that --

14 Q. All right. If I can, just so I understand,  
15 is there language in here in either one of the  
16 agreements you referenced that specifically states  
17 the mechanics for transferring the nuclear  
18 decommissioning trust fund, or does it just  
19 generally govern the transfer of this bushel of  
20 assets?

21 A. The latter. The bushel of assets.

22 Q. Do you think it's important for -- well,

1 strike that.

2                   You also stated, 384, 385, the Commission  
3 does not lack any facts that it requires to render a  
4 decision.

5                   Do you know -- do you believe it is  
6 important for the Commission to know whether or not  
7 a particular asset is actually an asset of the  
8 public utility in the context of these proceedings?

9       A.    When you say an asset of a public utility,  
10 do you mean an asset generally or an asset that's  
11 part of this notice of transfer?

12       Q.    I mean, they list a series of assets in  
13 their notice of transfer. They specifically intend  
14 to transfer -- and it's listed in the distribution.

15                   Is that what it's called? Contribution  
16 agreement.

17       MR. FLYNN: Are you referencing a specific  
18 schedule?

19       MR. ROBERTSON: It's in the text of the  
20 agreement, 2.1.

21       MR. FLYNN: What page, I'm sorry?

22       MR. ROBERTSON: Page 7.

1 THE WITNESS: Are you asking me whether or not  
2 the decommissioning trust funds are listed in --  
3 BY MR. ROBERTSON:

4 Q. No, I'm simply asking whether or not you  
5 believe it's important in the context of a 16-111(g)  
6 proceeding that the Commission know that the assets  
7 the utility proposes to transfer under this type of  
8 proceeding are actually assets of the public  
9 utility.

10 A. Yes.

11 Q. And is that because 16-111(g) only permits  
12 them to transfer assets of the public utility?

13 A. Yes.

14 Q. Now, in the context -- is it your opinion  
15 that the failure of the Commission to prohibit the  
16 transaction as proposed by Edison in its notice of  
17 transfer constitutes an approval of the transaction  
18 by the Commission?

19 A. If you're asking me if the Commission does  
20 nothing, does the transfer become effective without  
21 the Commission approval?

22 Q. Uh-huh, that's one way to put it.

1       A.    I would say given the time frame provided by  
2 the statute, the Commission has that time in which  
3 to act.

4               I guess that would imply the Commission  
5 does have the ability -- I mean, the transaction  
6 would go into effect if Commission has exercised its  
7 authority within that 90-day period.

8       Q.    All right.  So that if the Commission issues  
9 an order in which it says we do not assume -- I  
10 don't know what the Commission -- order the  
11 Commission will enter -- but if the Commission finds  
12 that the company will continue to be able to provide  
13 safe and reliable tariff service and that there is  
14 no likelihood of an increase in base rates, they  
15 make those two findings, does that constitute an  
16 approval by the Commission of the remainder of all  
17 the other elements of the transaction, in your  
18 opinion?

19       A.    I believe that means the Commission has  
20 approved the transaction, and whatever is included  
21 within that transaction.

22       Q.    Okay.  Now, if the Commission in the course

1 of a 16-111(g) proceeding becomes aware that a  
2 particular asset or set of assets are not assets of  
3 the public utility, what would be the impact, in  
4 your opinion? What would the Commission --

5 A. And those assets would be part of the notice  
6 provided to the Commission as far as transfer of  
7 assets?

8 Q. Yeah.

9 What could the Commission do about that  
10 under 16-111(g)?

11 A. I guess I have a difficult time  
12 understanding the question because if the assets  
13 were listed in the notice of transfer, then the  
14 assumption would be that they're considered public  
15 utility assets, but you're telling me that they're  
16 not public utility assets; so why would they be in  
17 the notice?

18 JUDGE ZABAN: Well, if it subsequently turns out  
19 that an asset claimed to be an asset turns out to  
20 not be an asset, what effect would that have?

21 BY MR. ROBERTSON:

22 Q. Yeah.

1                   And it comes out in the course of the  
2 proceeding, what do you think the Commission could  
3 do about it, in the context of this case or a case  
4 like this?

5       A.    If they're not a public utility asset , the  
6 Commission has no authority over them.

7       Q.    Okay.  So what would happen?  They would be  
8 excluded or the Commission would reject the whole  
9 notice?

10      A.    Well, I guess the premise to your question  
11 would be that the Commission would have to initially  
12 make some determination that certain assets were not  
13 public utility assets; and then based upon that,  
14 render a decision based on the two criterias under  
15 16-111(g) --

16      Q.    Okay.  I started to talk before I heard the  
17 rest of your answer.

18      MR. ROBERTSON:  I'm sorry, could you read the  
19 answer back to me.

20                               (Whereupon, the record was  
21                               read as requested.)

22  BY MR. ROBERTSON:

1 Q. And that rendering of the decision on the  
2 two criteria would relate only to the assets that  
3 were properly utility assets; is that correct?

4 A. That's correct.

5 Q. And so the other asset, the Commission could  
6 say, That's not a utility assets; that's not  
7 properly the subject of your filing; it ought to be  
8 excluded; we only make this finding in reference to  
9 the assets that are properly before us?

10 A. I think that's generally true; although, I  
11 think there's an argument that can be made that the  
12 company having presented these assets in their  
13 filing has deemed them to be public utility assets.

14 Q. Okay. Just because the company says so?

15 A. Well, I've seen a lot of cases where this  
16 Commission has taken the company's acquiescence to  
17 things that it has no authority to do and bound it  
18 later on; so this is -- could be a similar  
19 situation.

20 Q. Yeah, but we're starting with a clean slate  
21 here, and I'm not really trying to -- I'm trying to  
22 find out what you believe the law requires. I think

1 that's the substance of your testimony because  
2 you're offering opinions about that.

3           And so do you agree or disagree, in a  
4 perfect world, okay, that the Commission should or  
5 could say that, We got this asset here and it's  
6 turned out that it's not really a public utility  
7 asset; we got this other five assets over here that  
8 are public utility assets; we can -- we have the  
9 authority under 16-111(g) to exclude the non-public  
10 utility asset from the proceeding?

11       A.    I believe generally what you outlined would  
12 be the procedure.  If the Commission decides -- it  
13 determined that some assets are not public utility  
14 assets, they exclude them from proceedings.

15       MR. ROBERTSON:  I have no further questions.

16       JUDGE ZABAN:  Okay.

17       MS. DOSS:  I have one question.

18       JUDGE ZABAN:  Okay.  Ms. Doss.

19                   CROSS-EXAMINATION

20                   BY

21                   MS. DOSS:

22       Q.    Mr. Manshio, Leijuana Doss on behalf of the



1 Cook County State's Attorney Office.

2 Just for a clarifying, in what capacity  
3 are you testifying on behalf of ComEd in this  
4 proceeding?

5 A. I guess generally as a witness familiar with  
6 Commission proceedings, Commission rulings regarding  
7 decommissioning and the 16-111(g) of the statute and  
8 how that's changed, the traditional mode which the  
9 Commission has exercised its authority.

10 Q. And your familiarity, are you basing that  
11 more on as being an attorney or as a former  
12 commissioner or --

13 A. I think generally as a former commissioner.

14 MS. DOSS: No further questions.

15 JUDGE ZABAN: Okay. Anything further?

16 MR. RIDDICK: Just a couple.

17 CROSS-EXAMINATION

18 BY

19 MR. RIDDICK:

20 Q. I'd like to go back to one of your  
21 answers -- did I say just a couple?

22 MR. FLYNN: That's all right. We take it for

1 what it was worth.

2 BY MR. RIDDICK:

3 Q. Back to an answer to one of Robertson  
4 questions, I thought you had indicated that you  
5 viewed the Commission's finding that there were no  
6 statutory bases for prohibiting the transaction as  
7 an implicit approval of the entire transaction.

8 Is my recollection accurate or should  
9 that statement be modified?

10 A. Well, I don't want to touch the question  
11 about your recollection, but let me just clarify, my  
12 understanding of 16-111(g) is that a notice is  
13 provided by the utility to the Commission indicating  
14 they want to transfer assets, for example.

15 At that time the Commission has the  
16 ability to review those, clarify certain facts  
17 they've received and determine whether they want to  
18 initiate a proceeding or not.

19 If they decide to go forward with the  
20 proceeding because of a specific time line, there's  
21 limitations and intervention, and there's two  
22 criterias that come into play as far as reviewing

1 the transaction.

2                   So you can deem -- whether you deem  
3 there's a prohibition by the Commission, I think the  
4 Commission has the right to say that one of the  
5 requirements is not satisfied; and if that's the  
6 case, then, in effect, they're prohibiting the  
7 transfer.

8       Q.     Would a Commission finding that neither of  
9 the two conditions stated in 16-111(g) for  
10 prohibiting the transaction has been satisfied on  
11 the evidence in the case?

12               The Commission expressly makes those  
13 findings but says nothing else, does that order of  
14 the Commission constitute an approval in any way of  
15 the substance of the agreements provided as  
16 information to the Commission?

17       A.     No. There's two questions, I think, you've  
18 got there. First, is the -- if the Commission  
19 decides to reject the transfer because they find  
20 that one -- or two of the currents are not  
21 satisfied, I would think the Commission would have  
22 to elaborate. It's not as simple --

1 JUDGE ZABAN: Okay. You know, I'm going to jump  
2 in here, okay?

3 These aren't proper questions. Okay? He  
4 can tell you what he thinks. All right? But it  
5 really doesn't bind me. I'm -- we're the  
6 Commission, okay? He's telling you, based on his  
7 experience, certain things, all right?

8 The fact that Mr. Manshio feels this may  
9 or may not be true doesn't bind me in any way. I  
10 think if this were a separate proceeding in front of  
11 another agency other than the Commission,  
12 Mr. Manshio's opinions in that respect would be  
13 germane; but to have you tell him what the  
14 Commission is going to do or not do, I -- just isn't  
15 proper. I mean, we're not bound by anything he  
16 says, okay? It's strictly advisory at this point.

17 MR. RIDDICK: I understand that but that's the  
18 substance of his entire testimony.

19 JUDGE ZABAN: You're asking him to state  
20 definitive facts that ultimately the hearing  
21 examiners and the commissioner are going to have to  
22 decide on Mr. Manshio, okay?

1       MR. RIDDICK: With that understanding, I may  
2 proceed?

3       JUDGE ZABAN: I'm going to allow you one or two  
4 more questions and that's it.

5       MR. RIDDICK: Well, then I'd like to be heard on  
6 the point.

7       JUDGE ZABAN: Go ahead.

8       MR. RIDDICK: Mr. Manshio has given us 20 pages  
9 of his interpretation of what the Commission can and  
10 cannot do.

11       JUDGE ZABAN: Now, Mr. Riddick, you also told me  
12 that you objected to --

13       MR. RIDDICK: Absolutely.

14       JUDGE ZABAN: -- because you felt that it was --  
15 that, in fact, that it was legal rhetoric and it had  
16 no basis, okay?

17               Now, you come in and you're giving it  
18 credence by asking him questions about what he  
19 thinks. I mean --

20       MR. RIDDICK: That's not the case, your Honor.  
21 My objection was to exclude the testimony. My  
22 objection was not sustained. The testimony was let

1 in on the condition --

2 JUDGE ZABAN: Excuse me, I said I would grant you  
3 leave to file an appropriate motion barring that  
4 portion of the testimony, okay, that you felt wasn't  
5 proper; that I was going to admit it --- I was going  
6 to admit it as a document, but I was going to grant  
7 you leave to file your petitions with exceptions of  
8 the testimony.

9 MR. RIDDICK: Right. But at the moment, the  
10 testimony --

11 JUDGE ZABAN: Well, not at the moment --

12 MR. RIDDICK: -- is in the record.

13 JUDGE ZABAN: -- because, I tell you, it's kind  
14 of like you don't get two bites of the apple, okay?  
15 It's kind of like, when you file an objection of  
16 jurisdiction, you can't argue anything about the  
17 case. You got to deal with the jurisdiction.

18 If you feel his testimony is not germane,  
19 okay, and that's your objection, then file -- I'm  
20 affording you the opportunity to file the  
21 appropriate motions that we'll rule on. Okay?

22 MR. RIDDICK: Your position, your Honor, if I may

1 say so, presents me with an untenable choice.

2           You have said, I will allow the document  
3 in but you're not allowed to question because you've  
4 indicated that some of it may be objectionable;  
5 whereas, the document is now in the record. Had you  
6 ruled --

7       JUDGE ZABAN: Okay. I'm going to assume that  
8 those things that you questioned Mr. Manshio about  
9 are not objectionable.

10       MR. RIDDICK: Again, I think that presents an  
11 unfair choice. You have let the document into the  
12 record. I am now presented with facts in the record  
13 as stated by Mr. Manshio or opinions as stated by  
14 Mr. Manshio.

15           You're saying to me, I can either choose  
16 not to question him and take a chance that later  
17 on --

18       JUDGE ZABAN: And I'm explaining that sometimes  
19 in the law you have to make a choice. And  
20 particularly when you object to some kind of  
21 testimony, you have to make a choice as to  
22 whether -- I think it's so poor and it's so

1 untenable that it shouldn't be included; that once  
2 you go into it, you add credence to it, okay?

3 I'm telling you -- okay, this is my  
4 ruling: You're going to have to make a choice.  
5 Okay? If you want to file your motion, okay, then  
6 you can't go into the rest of this, all right?

7 Because I -- at this point, I really  
8 think he is at -- what you're asking him adds  
9 nothing to the proceedings. These are purely his  
10 opinions.

11 They don't bind the Commission in any  
12 way, shape or form, and I don't see anything you're  
13 adding here to what's going on.

14 MR. RIDDICK: I fail to see the difference  
15 between what I'm asking him to express an opinion on  
16 and what he has expressed 20 pages of opinions on.

17 JUDGE ZABAN: Well, then the answer is, if you  
18 don't think it's relevant, then I've give you an  
19 avenue for which to file the proper objection to the  
20 testimony.

21 I may sustain it and then none of it is  
22 relevant.



1       MR. RIDDICK: And if you do not sustain it, I  
2 will have lost the opportunity to question him.

3       JUDGE ZABAN: Well, that's the point of your  
4 objection; isn't it?

5       MR. RIDDICK: No. The point of my objection was  
6 to gain a ruling at this time. You deferred a  
7 ruling and put me in this position.

8       JUDGE ZABAN: I don't think I have. I think --  
9 I'm going to give you two more questions. That's  
10 it.

11       MR. RIDDICK: Well, given the conditions you've  
12 placed on my asking questions, I have no further  
13 questions.

14       JUDGE ZABAN: Okay. Anything further?

15       MS. DOSS: I have one more question.

16       JUDGE ZABAN: Okay. Ms. Doss.

17                       FURTHER CROSS-EXAMINATION

18                       BY

19                       MS. DOSS:

20       Q.   Leijuana Doss for the State's Attorneys  
21 Office.

22                       Was there a contract between you and

1 ComEd as far as testifying in this proceeding?

2 A. There's a letter of engagement.

3 Q. And in that letter of engagement, is there  
4 any characterization of how you were employed on  
5 behalf of ComEd?

6 MR. FLYNN: I'm sorry, what's meant by "how"?

7 BY MS. DOSS:

8 Q. In the sense of is there a title given to  
9 you? Were you hired as an attorney, as a former  
10 commissioner or any type of title?

11 A. Witness.

12 Q. Simple witness? Okay.

13 MS. DOSS: All right. No further questions.

14 EXAMINATION

15 BY

16 JUDGE ZABAN:

17 Q. Mr. Manshio, are you being paid for your  
18 testimony here today?

19 A. That's correct.

20 JUDGE ZABAN: Okay. Anybody else have anything  
21 further?

22 MR. ROBERTSON: I guess we need to -- at some

1 point in time, I want to move to admit my document,  
2 the trust, the nuclear decommissioning trust.

3 JUDGE ZABAN: Did we get an agreement from --

4 MR. ROBERTSON: We have an agreement as to  
5 foundation. They have no objection.

6 It is a true and correct copy. They have  
7 another -- an objection to relevancy which --

8 JUDGE ZABAN: Okay. That's fine.

9 Okay. It will be admitted as a true and  
10 accurate copy of the agreement, and I will admit it  
11 subject to the objection of Commonwealth Edison as  
12 to relevancy. I think the objections go to the  
13 weight being given to it, not as to its  
14 admissibility, okay?

15 MR. FLYNN: I would say for the record, actually,  
16 our objection goes to admissibility on the grounds  
17 of relevance, but we'll accept --

18 JUDGE ZABAN: I understand that. I'm going to  
19 admit it. I think it just -- I think it goes to --  
20 it will be given the appropriate weight as of the  
21 facts of the case.

22 Okay. Now, we need to talk about some

1 kind of schedule for briefing. The original --

2 MR. FLYNN: You want this off the record?

3 JUDGE ZABAN: Yeah, we can go off the record for  
4 this.

5 (Whereupon, a discussion  
6 was had off the record.)

7 JUDGE ZABAN: Let's go back on record.

8 There being no further testimony in this  
9 matter, we're going to mark it heard and taken.

10 MR. ROBERTSON: Mr. Examiner, we didn't identify  
11 by exhibit number, my exhibit.

12 JUDGE ZABAN: What do you want to call it?

13 MR. ROBERTSON: It's called IIEC Cross Exhibit 1.

14 JUDGE ZABAN: Okay. That's fine.

15 Now, also, I understand that Mr. Flynn  
16 going to have a late filing in this matter?

17 MR. FLYNN: Yes.

18 JUDGE ZABAN: Any other people that are going to  
19 need late filings in this?

20 That being the case, we're going to set  
21 July 14th for initial briefs, reply briefs will be  
22 July 20th. We're going to set July 26th for the

1 HEPO. July 31th for exceptions. August 3rd for  
2 replies. Okay?

3 Anything further?

4 MR. FLYNN: A question has been raised whether  
5 the ComEd exhibits were admitted. I recall moving  
6 to admit Exhibits 1 and 2, and I believe the  
7 examiner admitted 1 and admitted 2 over the  
8 objection of the City; but to the extent that's not  
9 correct, I guess I re-move.

10 JUDGE ZABAN: Yeah.

11 MR. FLYNN: And you can re-object.

12 MR. RIDDICK: Please note my objection.

13 JUDGE ZABAN: What I have done is, I have allowed  
14 the admission of Exhibit 1, okay, the testimony  
15 of -- the testimony of Mr. Manshio.

16 What I've done is I have admitted it,  
17 subject to objection, formal written objections  
18 being filed as to its relevance, okay?

19 MR. RIDDICK: That wasn't the basis of my  
20 objection.

21 JUDGE ZABAN: Well, your testimony was -- what  
22 was your objection?

1 MR. RIDDICK: That it was legal argument.

2 JUDGE ZABAN: Okay. Fine. Subject to you  
3 presenting me with the written brief on your  
4 position that it, in fact, it's legal argument, and  
5 then I will make a ruling or Mr. Showtis will make a  
6 ruling on its admissibility.

7 MR. WARREN: And to be clear, that's for  
8 everyone?

9 JUDGE ZABAN: That's right. And there are other  
10 parties that wanted to join in and I will allow them  
11 to join in as well on that basis.

12 MR. ROBERTSON: And just so the record is clear,  
13 IIEC Cross Exhibit 1 is the errata -- it's a  
14 document entitled "errata" and attached to it are  
15 the nuclear decommissioning trust agreements of  
16 Commonwealth Edison and Northern Trust Company.

17 JUDGE ZABAN: Okay. Anybody else feel a need to  
18 be heard?

19 That's it.

20 HEARD AND TAKEN

21

22